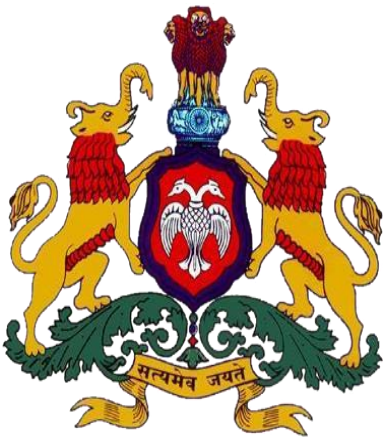
GOVERNMENT OF KARNATAKA



VOLUME: II

CONCESSION AGREEMENT

APPOINTMENT OF CONCESSIONAIRE ON TIPPING FEE BASIS TO EXECUTE THE COMPREHENSIVE INTEGRATED SOLID WASTE MANAGEMENT (ISWM) FACILITIES INCLUDING SECONDARY TRANSPORTATION OF MSW FROM TRANSFER STATIONS TO DESIGNATED PROCESSING CENTERS AND FURTHER PROCESSING AND DISPOSAL OF THE SAME

In South Package (RR Nagar Zone, Mahadevapura Zone, South Zone & Bommanahalli Zone) of BBMP and Bengaluru Urban District jurisdiction by seeking private sector participation on Public Private Partnership (PPP mode – DBFOT Model)

BENGALURU SOLID WASTE MANAGEMENT LIMITED (BSWML)

No. 30/1, 1st and 2nd Floor, UNI Buildings, Thimmaiah Road, Vasanth Nagar,

Bengaluru – 560 002.

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DRAFT CONCESSION AGREEMENT

This Concession Agreement (CA) is entered into the day of 2025 at Bengaluru, Karnataka,

BETWEEN

1. The Bengaluru Solid Waste Management Limited (hereinafter referred to as "BSWML") represented by Managing Director (hereafter referred to "Authority") and having its offices at NO. 30/1, 1st and 2nd Floor, UNI Buildings, Thimmaiah Road, Vasanth Nagar, Bengaluru –560 002, which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

AND

2. (Limited), a company incorporated under the provisions of the Companies Act, 2013 represented by and having its registered office(s) at ( ), (herein after referred to as the "Concessionaire" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes).

Collectively referred to as **"Parties"** and individually as "**Party"**

WHEREAS,

- UDD/GOK & BBMP, through the Government Order No. UDD 256 MNY 2020 Dated 05.03.21, has entrusted BSWML with such powers and functions as institutions of self-governance and assign to BSWML the tasks relating to solid waste management.
- The Authority is engaged in the management of municipal solid waste.
- BBMP and BSWML have jointly resolved to develop and operate an Integrated Solid Waste Management (ISWM) system. Under this Public-Private Partnership (PPP) arrangement, the selected bidders shall be responsible for the entire capital investment required to procure vehicles for transporting waste from transfer stations to the processing facility, as well as for establishing the integrated processing facilities and safe disposal of the waste thereafter. Concurrently, the Authority shall utilize its own funds to construct transfer stations within each division of the project jurisdiction and subsequently hand them over to the successful bidder. BBMP has identified appropriate land parcels for the ISWM facility and will provide these to BSWML on a permissive-use basis. These parcels shall, in turn, be handed over to the Concessionaire on a similar permissive-use basis for the purposes of implementing this Project.

- By offering land and associated support infrastructure—treated as the public investment—and requiring bidders to fund vehicles, GPS/RFID systems, office infrastructure, workshops, parking yards, and facilities to process 100% of the municipal solid waste (before disposal in the sanitary landfill), the project adopts a "Design, Build, Operate, and Transfer" (DBFOT) PPP model, with all assets reverting to the Authority after the concession period.

- The cabinet of GoK has given the consent and approved the proposals to establish Integrated Solid Waste Management facilities in two packages and one among the two packages is the South Package for a Concession Period of 30 years, excluding the construction period of 24 months.

- The Authority is desirous of "Appointment of Concessionaire on Tipping Fee basis to execute the Comprehensive Integrated Solid Waste Management facilities including Secondary Transportation of MSW from Transfer Stations to designated Processing Center(s) and further Processing and Disposal of the same in South Package (RR Nagar Zone, Mahadevapura Zone, South Zone & Bommanahalli Zone) of BBMP and Bengaluru Urban District jurisdiction by seeking private sector participation on Public Private Partnership (PPP mode – DBFOT Model)"(the "Project") by seeking private sector participation on Public Private Partnership ("PPP") mode by inviting Proposals for the Project within the Southern area of the jurisdiction of the BBMP and Bengaluru Urban District (the "Project Area") comprising of the 4 Zones of BBMP – comprises of the 4 Zones of BBMP – Rajarajeshwari Nagar Zone, Mahadevapura Zone, South Zone, and Bommanahalli Zone, along with neighboring areas of the Bangalore Urban District, as detailed in Annexure I of the RFP; which will inter alia include setting up and operation of the Project in accordance with the terms and conditions to be set forth in the Agreement.

- The BSWML had accordingly invited proposals under its {Request for Proposals} No. ___dated [•] (the "Request for Proposals" or "RFP") for short-listing of bidders for undertaking the development, operation and maintenance of the Project on Design, Build, Finance, Operate and Transfer (the "DBFOT") basis and had shortlisted certain bidders including inter alia, the {the selected bidder/consortium comprising ……. and ……. (Collectively, the "Consortium") with ..... as its lead member (the "Lead Member").

- After evaluation of the bids received, the BSWML had accepted the bid of the {selected bidder/ Consortium} (the "Selected Bidder") and issued its Letter of Award (hereinafter called the "LOA") No..... Dated … to the Selected Bidder requiring, inter alia, the execution of this Agreement within 30 (thirty) days of the date of issue thereof.

- {The Selected Bidder has since promoted and incorporated the Concessionaire ("Special Purpose Vehicle" or "SPV") as a company under the Companies Act, 2013 and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations under the Concession Agreement for implementing the Project.}.

- The Authority has {agreed to the said request of the Selected Bidder} and the Parties have accordingly agreed to enter into this Agreement with the Concessionaire for Development and Operation of Integrated Solid Waste Management System subject to and on the terms and conditions set forth hereinafter.

- Pursuant to the anticipated transition of the Bruhat Bengaluru Mahanagara Palike (BBMP) into the Greater Bengaluru Authority (GBA), all references to BBMP in this document shall be construed as referring to GBA from the date such transition takes effect, or as otherwise specified by official notification from the competent authority.

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1 :DEFINITIONS AND INTERPRETATION

1.1. Definitions

1.1.1 The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules. The words and expressions used but not defined in this Agreement and defined in the Environment Protection Act, 1986 (the **"EPA"**), Solid Waste Management Rules, 2016 (the **"SWM Rules"**), the Construction and Demolition Waste Management Rules, 2016 (the **"C&D Rules"**), the Plastic Waste Management Rules, 2016 (the **"PWM Rules"**), the Bio-Medical Waste Management Rules, 2016 (the **"BWM Rules"**), the E-Waste Management Rules, 2016 (the **"EWM Rules"**), the Hazardous Waste Management Rules, 2016 (the **"HWM Rules"**),and Guidelines for Disposal of C&D Waste, 2019 (the **"C&D Waste Guidelines"**), shall have the respective meanings as are assigned to them, respectively, in the EPA, the SWM Rules, the C&D Rules, the PWM Rules, the BWM Rules, the EWM Rules, the HWM Rules, and the C&D Waste Guidelines.

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein. The words and expressions beginning with capital letters and not defined herein, but defined in the Agreement, shall, unless repugnant to the context, have the meaning ascribed thereto therein.

1.2. Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re- enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- References to Applicable Laws shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
- The words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint

ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);

- The headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- The words "include" and "including" are to be construed without limitation;
- Any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- Any reference to a "business day" shall be construed as a reference to a day (other than a Sunday or any holiday declared by GOI / GOK) on which banks. are generally open for business;
- Any reference to a day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- The schedules and annexures to this agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference.
- References to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, articles, sub-articles, clauses and schedules of or to this agreement.
- Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- Any reference to ‘construction’ or ‘building’ includes unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and ‘construct’ or ‘build’ shall be construed accordingly.
- Any reference to "development" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up gradation and other activities incidental thereto, and “develop” shall be construed accordingly;
- The Damages payable by either Party to the other, as set forth in this Agreement,

whether on per diem basis or otherwise, are mutually agreed genuine pre- estimated loss and Damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages");

- Time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and
- Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party in this behalf and not otherwise;
- References to any gender shall include the other and the neutral gender;
- “Lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- “Indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent.
- References to the “winding-up”, “dissolution”, “insolvency”, or “reorganization” of a Company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such Company or corporation is incorporated or any jurisdiction in which such Company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- Save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub- clause (u) shall not operate so as to increase liabilities or obligations of BSWML hereunder or pursuant hereto in any manner whatsoever;
- Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party in this behalf and not otherwise;
- The Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

- References to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;

- The damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages"); and time shall be of the essence in the performance of the Parties" respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this agreement any documentation required to be provided or furnished by the Concessionaire to the Authority and/or Independent Engineer shall be provided free of cost and in three copies, and if the Authority and / or the Independent Engineer is required to return any such documentation with their comments and /or approval, they shall be titled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the Parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.2.5 The Parties acknowledge that damages for specific defaults prescribed under this Agreement are a genuine pre-estimate of and reasonable compensation for the loss and damage that shall be suffered by the non-defaulting Party due to failure of the defaulting Party to perform its obligations in accordance with this Agreement, and are not in the nature of a penalty.

1.2.6 Subject to the provisions of this Agreement, the Concessionaire shall be responsible to and indemnify, the Authority for the acts and omissions of the Concessionaire Related Parties as if they were the acts and omissions of the Concessionaire and the Authority shall be responsible to and indemnify the Concessionaire for the acts and

omissions of Authority Related Parties, respectively, as if they were the acts and omissions of the Authority, as the case may be.

1.2.7 Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the Authority, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.

1.3. Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down; provided that the drawings, engineering dimensions and tolerances may exceed 2 (two) decimal places as required.

1.4. Priority of agreements, clauses and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- this Agreement; and
- Schedules of Draft Concession Agreement
- Project Information Memorandum
- Request for Proposal / Tender Documents
- Corrigendum's & Addendums part of the tender documents.

1.4.2 Subject to the provisions of Clause 1.4. in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

- between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- between any two Schedules, the Schedule relevant to the issue shall prevail;
- between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2 : SCOPE OF WORK

2.1. Name of the work

Appointment of Concessionaire on Tipping Fee basis to execute the Comprehensive Integrated Solid Waste Management facilities including Secondary Transportation of MSW from Transfer Stations to designated Processing Center(s) and further Processing and Disposal of the same in South Package (RR Nagar Zone, Mahadevapura Zone, South Zone & Bommanahalli Zone) of BBMP and Bengaluru Urban District jurisdiction by seeking private sector participation on Public Private Partnership (PPP mode – DBFOT Model). This package comprises of the 4 Zones of BBMP –Rajarajeshwari Nagar Zone, Mahadevapura Zone, South Zone, and Bommanahalli Zone, along with neighboring areas of the Bangalore Urban District, as detailed in Annexure I of the RFP.

2.2. Introduction

An Integrated Solid Waste Management (ISWM) facility has been conceptualized to offer a comprehensive solution for the processing of solid waste generated in Bengaluru City, at various locations as per project requirements. The ISWM Project involves secondary transportation of municipal waste and further processing solid waste into new or recycled products through methods such as composting, bio-methanation, waste-to-energy from RDF, pelletization, or other proven technologies, in accordance with the standards outlined in the Background Documents, Solid Waste Management Rules 2016, SBM 2.0, and other applicable laws and amendments during the concession period.

The aim is to process all waste generated and generate revenue by applying circular economy principles, thereby reducing the burden on landfills. This shall be achieved through an integrated system of secondary transport, processing and disposal. The entire system shall comply with the Solid Waste Management Rules, 2016 and meet the KPIs outlined in Article 19 of the DCA.

The scope of the Project (the—Scope of the Project) shall mean and include, during the Concession Period, Design, Build, Finance, Operate and Transfer (DBFOT) of facilities and infrastructure for:

- Transportation of MSW from the Transfer Stations

- O&M and Maintenance of Transfer Stations
- Design, Development, Operation, Maintenance, and Management of Integrated Processing Facility for MSW
- Design, Development, Operation, Maintenance, and Management of Sanitary Landfill for disposal of remnants and residual inert matters from processing of MSW
- Generation of revenue from sale of reusables and recyclables (if any), sale of by-products or output from processing of MSW (like gas, electricity, etc.), and generation of financial benefits from carbon credits

2.2.1 Secondary collection, segregation, and transportation of MSW

The Concessionaire shall be responsible for the following tasks related to Secondary Transportation, starting from at least [90 (ninety)] days prior to COD, or within 90 (ninety) days from the date of handover of the Transfer Station(s) to the Concessioniare in that division.

- **Transportation of MSW from the Transfer Stations:** The Authority/Authority's agencies will bring in MSW generated in the Project Area and the waste collected from the street sweeping activity to the Transfer Stations. The Concessionaire shall be required to transport the waste from the Transfer Stations, starting from the Date of Commercial Operation (considering Mobilization Period as per the Agreement) or from the handover of the Transfer Station, whichever is later till the expiry of the Concession Period. The same shall be done in an order to ensure the following:
    - **Transport to Concessionaire's processing facilities:** Concessionaire shall be responsible to conduct Secondary Transportation from the transfer stations to their designated waste processing and disposal site(s) (Note: There are some divisions where Transfer Stations exist and are being operated by another agency contracted by the Authority, wherein the responsibility for Secondary Transport will be handed over to the Concessionaire at the expiry of the existing contracts. More details are given in Annexure 1 of PIM.)
    - **Integration with existing plants for BSWML**: Concessionaire shall be responsible to conduct Secondary Trasport from the notified Transfer Stations to Existing plants where BBMP has existing commitments (Annexure 1 of PIM for details regarding location, capacity and type of waste required, tagging with transfer stations, duration of commitment)

    (It is to be noted that BSWML has existing commitment of secondary transportation of 500 TPD across the BBMP + BUD with another Agency, which shall continue

as per the existing contract.)

- **Integration with Dry Waste Collection Centers (DWCCs):** Concessionaire shall be required to collect the dry waste from the DWCCs and perform Secondary Transport from the DWCCs to the designated waste processing and disposal site(s) after extraction of recyclable materials by ragpickers. Refer Annexure 1 of PIM for details regarding DWCCs in the package, location, capacity, assets included, layout, manpower engaged, etc. These will continue to be operated by the ragpickers associations, as per current scenario.

- **Operation & Maintenance and Management of Transfer Stations:** Some Transfer Stations in this package are currently operational and operated by agencies contracted by the Authority. Refer Annexure 1 of PIM for details regarding the current operator, assets in place, layout, duration of existing contract and scope of work for each of them. These (and the responsibility for Secondary Transportation under these Transfer Stations) will be handed over to the Concessionaire after a period of 5-7 years, as soon as the current agreement expires. Until such time, the Concessionaire will not be responsible for operation of Transfer Station or to perform Secondary Transport in these respective areas.

  Wherever a Transfer Station doesn't currently exist, Authority shall be responsible to construct and handover Transfer Stations to the Concessionaire at their own cost, including civil structures, machinery, containers, hook-loaders, etc. The Authority plans to develop such Transfer Stations in this package within the next 1-2 years. Refer Annexure 1 of PIM for details regarding location, capacity, details regarding assets and layout of the planned Transfer Stations. As soon as a new Transfer Station is constructed, it shall be handed over to the Concessionaire along with scope of Secondary Collection & Transportation in that area. Until such time, the Secondary Transportation in that area shall be done by the Authority/contractors of the Authority engaged in Primary C&T. (All the Transfer Stations, existing and new, being handed over shall include hook-loaders and containers provided by the Authority on an as-is, where-as basis.) Until the facility COD is achieved, the Concessionaire shall transport waste from the new Transfer Stations to designated place as notified by the Authority within the aggregate lead distance considered. Irrespective of the date of handover of the Transfer Stations to the Concessionaire, all Transfer Stations and the scope of work therein shall be handed back to the Authority 30 years from the date of the COD of the processing & disposal facility.

2.2.2 Processing & Disposal of MSW as per SWM Rules

- **Design, Development, Operation, Maintenance, and Management of Integrated Processing Facility**: It is proposed to develop new facilities for Processing & Treatment of MSW as per MSW Rules and other applicable regulations for MSW processing, resource recovery, treatment, and disposal (P&D) facilities. Concessionaire shall develop the Project Facilities using technology or technologies that it had proposed in its Bid to the RFP, adhering to Solid Waste Management Rules, 2016 and in accordance with terms of this Agreement. Concessionaire shall be responsible for Construction of the Integrated Processing Facility within 24 months from handover of the site or getting Environmental Clearance and Consent to Establish, whichever is later; and operating the same for 30 years post COD.

- **Design, Development, Operation, Maintenance, and Management of Sanitary Landfill for disposal of remnants and residual inert matters from processing of MSW:** It is proposed to develop new sanitary disposal landfill and a leachate treatment plant (LTP) for management of inerts to be landfilled after processing of MSW. Concessionaire shall be responsible to transport inert and post-processing inert materials from their own processing sites to the landfills. Concessionaire shall be responsible for Construction of the Sanitary Landfill and the Leachate Treatment Plant (as per discretion of the Concessionaire) within 24 months from the Execution Date or handover of the site, whichever is later; and operating the same for 30 years post COD. Furthermore, the Concessionaire shall be responsible for performing post-closure activities as per prevailing guidelines of Central Pollution Control Board, State Pollution Control Board, SWM Rules, etc. over the next 15 years to ensure proper closure of the landfill.

- The **revenue or income from the sale of segregated useful materials**, including reusable and recyclable materials (if any), compost, soil conditioner, raw RDF, C&D waste, soil, power, electricity, or any other by-products, shall accrue to the Concessionaire. The Concessionaire shall also be responsible to take necessary action to accrue benefits from Carbon Credits, as per Clause 5.1.7 (hh), and subsequently share 50% of the benefits accrued from the Carbon Credits of the Project with the Authority.

2.2.3 Bulk Waste management:

- The management of bulk waste shall not be included within the Concessionaire's scope. However, the Concessionaire shall be empaneled as an Authorized Waste Processor for bulk waste as per existing bylaws of the BBMP and BSWML and encouraged to collect, transport, and process bulk waste at the ISWM facility. The Concessionaire shall be allowed to charge a Service Fee to BWGs, in line with the "Polluter Pays" principle of

SWM Rules, 2016. The Concessionaire is to conduct their own analysis and survey of the bulk waste generated to ascertain the processing capacity of the plant(s) required.

- Since this is a commercial activity conducted on government land, the Concessionaire shall remit INR 800 per TPD of bulk waste handled. This amount shall be escalated by 5% every year in line with the escalation in the tipping fee).
- All BWGs shall be audited by the Authority/BBMP as per prevailing regulations and reporting requirements. Those entities found deficient shall be directed to employ the services of the Concessionaire for the purpose of management of the bulk waste generated by them.

2.3. Planned Project Capacity

2.3.1 The comprehensive Integrated Solid Waste Management (ISWM) Project is intended to cover the entire jurisdictional area encompassing the full extent of BBMP limits and the Bengaluru Urban District area. This area is distributed across two packages, with the jurisdiction pertaining to South Package detailed more precisely and annexed as Annexure-I of the RFP.

2.3.2 Based on 2011 Census data, waste generation (excluding bulk waste) within the Project Area has been projected for 2030. While the facility is expected to commence operations around the year 2028, the waste generation estimates have been calculated for 2030 in order to account for full operational capacity and long-term planning. By 2030, the total municipal solid waste from households and street-sweeping activities—excluding bulk waste—is expected to be 4,113 tonnes of waste per day (TPD). Of this, 1,113 TPD is already committed to existing facilities for P&D. Once these commitments are accounted for, the Package shall have to deal with 3,900 TPD for Secondary Transportation and 2,999 TPD for Processing and Disposal.

2.3.3 The proposed planned capacity has been assessed and planned to meet the projected demand of Year 2030. Due to variations on a daily basis, the Concessionaire must accept maximum up to 125% of the Planned Capacity on any given day. As the waste generated within the Project Area increases over time, the Authority shall be free to execute other processing and/or disposal projects by calling tenders: wherein the Concessionaire shall have the First Right of Refusal for participation in such tenders, provided that the Concessionaire bids within 10% of the preferred bidder. For the avoidance of doubt, it is hereby clarified that, for any new tenders

pertaining to Processing and/or Disposal of municipal solid waste in the Project Area, the Concessionaire shall be invited to match the bid of the Preferred bidder, subject to the condition that the Concessionaire's bid is within 10% of the Preferred bidder.

2.3.4 The Authority shall provide a Minimum Waste Guarantee, i.e, minimum amount of waste that shall be delivered to the Transfer Stations (excluding the amount committed to existing plants) equal to 50% of the Planned P&D Capacity in the first 5 years after COD, and equal to 75% of the Planned P&D Capacity. This shall include the waste from Bulk Waste Generators, if any, accepted for processing by the Concessionaire.

Planned Capacity	Secondary Transportation (TPD)	Processing & Disposal (TPD)
South Package	3,900	2,999

2.4. Detailed Scope of Work:

2.4.1 Scope of work for Secondary Transportation:

- The average trip distance considered for secondary transportation—from the Transfer Station to the entry point of the processing plant up to the weighbridge—is estimated at 40 kilometers. However, this distance may vary depending on the final locations of the Transfer Stations and the processing facility. In cases where the actual average trip distance varies by more than 10% from the estimated average, the additional lead distance for secondary transportation shall be considered for reimbursement, subject to the prior approval of the Authority. The final average trip distance shall be established based on the confirmed location of the weighbridge at the processing plant.
- Secondary transportation shall be executed using large-sized static compactors capable of compressing municipal solid waste. Leachate generated during the compaction process shall be collected through designated leachate collection pits. The compacted waste shall be stored in containers provided by the static compactors and transported using hook loaders.
- The Concessionaire shall submit a comprehensive plan and route map detailing the methodology for the secondary transportation of Municipal Solid Waste (MSW).
- The jurisdictional area under the scope of this package comprises fourteen (14) divisions. Each division shall be provided with a Transfer Station, to be developed by BSWML and subsequently handed over to the respective Concessionaire for that jurisdiction. At a Project level, three (3) transfer stations are currently under AMC contracts with a tenure of seven years. Upon termination of these contracts and based on mutual consent between the Authority and the Concessionaire, these transfer stations shall be handed over on an as-is basis, along with the Secondary Transportation (C&T) scope under the corresponding ISWM package. Four (4) new transfer stations, currently under construction, shall be handed over to the Concessionaire along with the Secondary Transportation scope of the respective ISWM package. The additional transfer stations required under the respective package shall be developed by the Authority at its own cost and handed over to the Concessionaire in a phased manner, along with the corresponding Secondary Transportation responsibilities. The same shall be completed within the first 2 years from the Execution Date. Package-wise details of the Transfer Stations are provided in Annexure 1 of PIM.
- The operation and maintenance of Transfer Stations handed over to the Concessionaire shall be the sole responsibility of the Concessionaire throughout the Concession Period.
- MSW operations are essential in nature and should have a continuity without any

interrupt. The Concessionaire should work out a detailed plan with the Authority. The detailed transition plan shall be submitted by the Concessionaire within 90 days of appointment date and approved by the Authority and the same shall be implemented. While implementing the transition plan there should be a smooth and seamless handing over and taking over of the operations and public should not get any inconvenience of disruption of service.

- The commencement of Secondary Transportation activities shall be undertaken by the Concessionaire in a phased manner, subject to the completion or termination of contracts that may be active within each respective Zone. The Concessionaire shall initiate the operation and maintenance of Transfer Stations, including storage, handling of waste, and transportation of MSW from designated Dry Waste Collection Centers (DWCCs) (as per Annexure 1 of PIM) to the Project facilities or to the existing commitment plants (as per Annexure 1 of PIM), immediately upon execution of the Concession Agreement. Delays in commencement of any activity under the agreed scope of work shall attract penalties in accordance with the Key Performance Indicators (KPIs) specified under Article 19 of the Concession Agreement.

Compliance

- Each vehicle must display the designated route map and be integrated with the Integrated Command and Control Centre (ICCC) of the Authority via the Concessionaire's own software. The Concessionaire shall be responsible for completing all necessary activities, including obtaining statutory clearances related to land development, and mobilization/procurement of equipment, vehicles, machinery, and other resources essential for the transportation of MSW from the BBMP jurisdiction and Bengaluru Urban District areas, as specified for South Package in Annexure-1 of the RFP document.
- The Concessionaire shall provide real-time data feeds and monitoring capabilities to BSWML to ensure continuous oversight of vehicle movements and operational

transparency throughout the concession period.

- A Vehicle Tracking and Management System (VTMS) shall be mandatorily installed on all vehicles, containers, and weighbridges used for MSW transportation and post-processing reject disposal. The VTMS shall be a web-based application with real-time GPS tracking, GIS integration, and client-side connectivity at all key locations, including the weighbridge.

- The Concessionaire shall supply all necessary hardware and infrastructure, including personal computers/laptops, printers, GPS devices, network links, SIM cards/dongles, and antivirus software. VTMS data shall be integrated with BSWML's municipal server via the IT Department, and training shall be provided to municipal and Authority staff. Vehicles shall be equipped with loading/unloading switches. Availability of VTMS data shall be a mandatory requirement for tipping fee disbursement.

- All vehicles must be fully connected to the BSWML server through VTMS to enable uninterrupted tracking and monitoring. Each vehicle shall also be fitted with a GPS device that remains operational at all times, with the live feed integrated into BSWML's monitoring platform and website.

- All vehicles deployed shall comply with prevailing emission norms, and valid Fitness Certificates (FCs) must be obtained from the RTO as per statutory requirements.

- Noise and air pollution levels shall be monitored in line with norms prescribed by the RTO and Karnataka State Pollution Control Board (KSPCB). Relevant certificates shall be obtained periodically and prominently displayed on each vehicle.

2.4.2 Scope of work for Processing and Disposal:

- The Estimated waste quantum of the package has been arrived as 2,999 TPD towards Processing & Disposal which excludes bulk waste to be transported as well as discounts the Waste to be supplied to the existing commitments of corresponding package.

- The Concessionaire shall prepare a comprehensive proposal for processing the total estimated waste of 2,999 TPD, and undertake the design, development, operation, and maintenance of new integrated Solid Waste (SW) Processing, Resource Recovery, Treatment, and Disposal (P&D) facilities. The proposal shall incorporate appropriate technologies for processing the waste received at the plant. The technologies proposed must be in line with those approved under SWM Rules, 2016 (or any amendments thereof), or any other technologies approved by the CPCB, State PCB, or other relevant statutory bodies in India or abroad.

- The Concessionaire shall undertake the planning, engineering, designing, construction,

operation, and maintenance of MSW Processing, Resource Recovery, Treatment, and Disposal (P&D) facilities, including a scientifically engineered sanitary landfill, Leachate Treatment Plant (LTP), and all auxiliary infrastructure such as stormwater drainage, internal roads, weighbridges, vehicle parking yards, workshops, canteens, administration buildings, laboratories, and other appurtenant structures as per operational and regulatory requirements.

- The Concessionaire shall establish the required number of processing/ resource recovery projects, which may include waste-to-energy projects, bio-methanation, composting, compressed bio-gas (CBG) projects, MRF facilities, or any other suitable and sustainable technologies. These technologies must conform to SWM Rules, 2016 (or any amendments thereof), or be approved by the CPCB, State PCB, or other statutory bodies, and shall be implemented either at locations indicated by the Authority or at alternative sites approved by the Authority.

- The Concessionaire shall install weighbridges at both the entry and exit points of the processing plant. Both weighbridges shall be synchronized with GPS and RFID mechanisms, at locations and configurations as deemed appropriate and mutually agreed upon with the Authority.

- The Concessionaire shall also develop waste management facilities for the treatment and disposal of dead animals, sanitary waste, and any other waste types as authorized by the Authority as per the SWM Rules of 2016.

- The successful Bidder is at liberty to choose the Proven and demonstrated technology in the beginning and during the course of the project. Any advanced technology which can improve the performance shall be permitted unconditionally. The technologies may be Compost / RDF / Waste to Energy / Bio Methanation / Dry Methanation / Pyrolysis / Plasma or any other technology which is proved and can be implemented to improve the processing and disposal is within the scope of the Concessionaire but should meet the SWM Rules, 2016 & SBM 2.0 guidelines.

- Authority desires that its Solid Waste Management system shall be a 'model system' for the Country, which would scientifically collect waste from waste generator and bulk generators, transport, process and dispose of Municipal Solid Waste to have maximum recycling and recovery, Without prejudice to the generality of the foregoing, Concessionaire shall have the right to develop the Project Facilities using such technology that it considers suitable and commercially viable for the purposes of implementing the Project, in accordance with terms of this Agreement and Applicable Law. It is acknowledged that it is the intention of Concessionaire to use the technology associated with the concept of an integrated waste processing plant, the specifications

of which are given in schedule 23, and that Concessionaire shall have the right to modify, adapt, upgrade or change the technology, from time to time, based on actual operations of the Plant and requirements of the Project.

- The revenue or the income from the sale of the segregated useful material such as reusables and recyclables, compost, soil conditioner, user charges from bulk waste generators, raw RDF, C&D, Soil, sale of power, electricity or any other by-product materials shall be in the scope of the Concessionaire and Concessionaire shall take such additional revenue into account while estimating the tipping fee sought.

2.4.3 Items excluded from Scope of work

- The following nature of scope is not considered as the part of Concessionaire's scope of work under this Agreement Receive, manage, process or dispose Bulk Waste Generated

- Receive, manage, process or dispose Bulk Waste Generated

- Receive, manage, process or dispose Biomedical Waste • Receive, manage, process or dispose Industrial Waste

- Receive, manage, process or dispose Construction & Demolition Waste Sweeping of streets (Manual and/or Mechanical) Drain cleaning/ Silt clearing

- Maintenance / cleaning of parks

- Maintenance of public places / toilets

- Removing and Transportation of carcasses (dead animals)

- Management of Domestic Hazardous Waste: Hazardous waste such as physical, chemical, biological, reactive, toxic, flammable, explosive, or corrosive waste, if found, during excavation, sorting or segregation shall be stored in a separate area for inspection by authorities of the Municipal Corporation, which will arrange to shift, transport, and dispose by authority as per the Hazardous and Other Waste (Management and Trans boundary Movement) Rules, 2016.

  It is hereby clarified that the Concessionaire may undertake management of bulk waste and/or domestic hazardous waste as per the applicable rules and regulations at no cost to the Authority, and at their own discretion

2.5. Role of Authority (BSWML):

- The Authority shall initiate and implement appropriate processes to expedite land acquisition required for the development of the Integrated Solid Waste Management (ISWM) processing and disposal facilities.
    - The Authority shall ensure the smooth transition and handover of all relevant existing project facilities, including fixed and mobile assets related to municipal solid waste management. This shall include, but not be limited to Facilities for Secondary Transportation, as applicable.
- The Authority will provide suitable, sufficient and encumbrance free land for construction of integrated processing & disposal facilities and all other facilities required for the entire term of the agreement at permissive use only (Article-10.1). The details of the potentially available land parcels are annexed as part of the RFP. In the case of delays and/or issues in the procurement of the proposed land, the Authority may provide alternative land at a similar distance. In case if the variation in distance of the alternate site is more than 10%, the tipping fee shall be upward or downward revised basis mutual agreement of the Concessionaire and the Authority, as per the recommendation of the Independent Engineer.
- The Authority shall permit the Concessionaire to utilize and obtain utilities necessary for the construction and operation of the project facilities, subject only to payment of applicable user charges, without levying any additional fees.
- The Authority shall provide institutional support by issuing required letters or endorsements to concerned departments and facilitating the execution of necessary agreements between the Concessionaire and relevant agencies involved in the ISWM project.
- The Authority shall ensure timely payments of all dues payable to the Concessionaire under this Agreement, in accordance with the prescribed timelines.
- The Authority shall recognize the Special Purpose Vehicle (SPV) as the legal entity authorized to undertake and perform the rights and obligations of the Selected Concessionaire under this Agreement. The Selected Bidder shall maintain a minimum of 51% (fifty-one percent) shareholding in the SPV throughout the Concession Period. Upon incorporation, the SPV shall be treated as a permitted assignee, and shall enter into a novation agreement with the Authority within 15 days from the date of incorporation.
- The Authority shall have right over assets and technology in case of termination or expiration of Concession Period, whichever is earlier, upon due payment of Termination Payments if applicable.

- The Authority assures to Concessionaire that any of its officers, employees, or workmen shall not, at any time, during the concession period interfere with or obstruct the functioning, running, and overall management of the project and in any matter about or connected therewith.
- The Authority shall appoint the Independent Engineer within 75 days from the date of signing of the Concession Agreement through a tender process to monitor the project execution and implementation.
- The Authority will provide necessary support to Concessionaire in securing Applicable Approvals.
- The Authority shall observe and comply with all its obligations as specified under this Concession Agreement.

2.6. Role of Concessionaire:

- Design Build Finance Own & Transfer (DBFOT) on Public Private Partnership ("PPP") mode with 100% Concessionaire investment to execute the comprehensive Integrated Solid Waste Management (ISWM) facilities including collection & transportation of MSW from transfer stations to designated processing centers and further Processing and Disposal of the same at designated processing plant within the jurisdiction of the package.
- To adopt the existing system (to the extent handed over by the Authority) and upgrade, modernize and make user-friendly over a period. To ensure revamping, redevelopment, operation and maintenance of all existing and new facilities including SCTPs, TS, MRFs, Fleets, Vehicle parking yards and workshops etc. To utilize the existing infrastructure like DWCC, vehicles, transfer stations, etc., 'as is where' is applicable.
- To establish, operate and maintain all facilities for handling, processing and disposal of MSW and other wastes as per proposal and in line with relevant Rules for the entire project period.
- To design, engineer, finance, procure, construct, install, commission, operate and maintain each of the Project Facilities.
- To choose proven and demonstrated technologies available for processing and disposal of MSW which are permitted as per SWM Rules, 2016, CPHEOO guidelines and SBM 2.0 Guidelines. The Concessionaire is free to choose technology, which is proven, viable and sustainable. To ensure adherence to meet all the construction requirements as per guidelines for construction as per BIS, Solid Waste Management Rules, 2016, and other applicable standards/ guidelines.
- To undertake operation and maintenance of the project facilities using best in class

technology, environmental, health and safety SOP's and a service delivery model either itself or through such Person as may be selected by it that is reliable, cost effective and compliant provided that and the ultimate obligation and responsibility for the performance of this agreement shall continue to vest with the Concessionaire.

- To undertake storage, usage, marketing, and selling or disposal of all the products and by products generated, produced at the processing and treatment facility (including but not limited to RDF, steam, compost, electricity, methane, CNG/CBG, and Residual Inert Waste, any product or by product) and to generate revenue from the above processes to meet the project requirements
- To retain all kinds of revenues generated from the sale of such recyclable products (RDF, Sync gas, Steam, compost, electricity, methane, CNG/CBG, and Residual Inert Waste) with no sharing to BBMP or Govt of Karnataka /India state Electricity Distributors companies and its entities.
- To retain the fiscal incentives and benefits accruing in respect of or on account of the Project including Certified Emission Reductions (CERs) or Verified Emission Reductions (VERs) under Kyoto Protocol / Climate Change initiative, in a ratio of 50:50, wherein half the proceeds shall be shared with the Authority.
- To undertake Information, Education, & Communication (IEC) campaigns with the public and all stakeholders in BBMP Area to inculcate good MSW management practices, including recycling, and segregation.
- To interface, synchronize with existing organized and unorganized waste-collection and management systems to ensure that there is a smooth and harmonious transition and working of the systems and proper quality of waste is received at the site.
- To exclusively hold, possess, and control the Site, in accordance with the terms of the Concession Agreement for the purposes of the due implementation of this Project.
- To transfer the Project Facilities to the Authority at the end of the Term or on Termination, in accordance with the provisions of this Agreement.
- To ensure optimum utilization of the Site and land available and not use the same for any purpose unconnected or which is not incidental to the Project or related activities, unless otherwise permitted under this agreement. For avoidance of doubt, any land given by BSWML/BBMP to the Concessionaire for this project shall not be used for development of residential or commercial facilities or premises for rent, lease or similar purpose.
- To mobilize resources for Secondary Transportation within the stipulated time period. Mobilization period for Secondary Transport shall within 03 months before the COD

or 3 months from the date of handing over of the Transfer Station, whichever is earlier. Mobilization period includes time to obtain all the necessary clearances & approvals from relevant authorities and deploy the vehicles & manpower for secondary transportation. If the delay is beyond the control of the Concessionaire, then the mobilization period shall be extended based on the reasons recorded and in such recorded hindrances justified by the engineers in charge or the authorised representative of the Authority.

- Special purpose vehicle('s) (SPV) shall be established under the Companies Act 2013 for executing the project, where the Concessionaire shall undertake and perform the obligations and exercise the rights of the Consortium/Selected Bidder under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.

ARTICLE 3:THE CONCESSION

3.1. Grant of Concession:

Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority awards to the Concessionaire the concession set forth herein including exclusive right, license and authority to construct, operate and maintain the Project (the "Concession") during the period of 30 (thirty) years commencing from Commercial Operation Date (the "COD") of the Processing and disposal facilities, and the Concessionaire hereby accepts the Concession and agrees to implement the

Project subject to and in accordance with the terms and conditions set forth in this Agreement.

3.2. Rights Associated with the Grant of Concession:

Without prejudice to the generality of foregoing, the Concession hereby granted to Concessionaire shall oblige or entitle (as the case may be) the Concessionaire to:

3.2.1 the Right of Way, access and license rights to use the Site on permissive use basis for the purpose of and to the extent conferred by the provisions of this agreement;

3.2.2 access to the Site from the Compliance Date, for the sole purpose of implementing the Project, provided, however, to the extent of applicability of the Article 14.1.1, the Concessionaire shall be entitled to access the Site prior to the Compliance Date;

3.2.3 to design, engineer, finance, procure, construct, install, commission, operate and maintain the Project Facilities, on Public Private Partnership ("PPP") mode with 100% Concessionaire investment, either itself or through such Person as may be selected by it;

3.2.4 Upon achieving COD of the Project, to manage, operate and maintain the same either itself or through such Person as may be selected by it, provided that the ultimate obligation and responsibility for the performance of this agreement shall continue to vest with the Concessionaire;

3.2.5 bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;

3.2.6 to transfer the Project Facilities to the Authority at the end of the Concession Period

of 30 years (after COD) or on Termination, in accordance with the provisions of this Agreement;

3.2.7 to borrow or raise money or funding required for the due implementation of the Project and mortgage, charge or create lien or encumbrance on the whole or part of the Project Facilities except the Site and immovable property created for Plant, and Landfill Site;

3.2.8 to process MSW at the Plant, produce energy from Waste to Energy plant and produce BioCNG from Waste to Gas Plant and dispose the process remnants and inert waste as per provisions of this Agreement, Solid Waste Management Rules, 2016 and Applicable Law;

3.2.9 To, in accordance with the Applicable Law, store, use appropriate, market, and sell or dispose all the components/ products of the MSW, including but not limited to recyclables, electricity, methane, RDF, compost, Bio Gas, Residual Inert Matter or any other product, and to further retain and appropriate any revenues generated from the sale of such products/ by- products, in accordance with this Agreement;

3.2.10 to obtain the utilities required for enabling the construction of the Project Facilities;

3.2.11 exclusively hold, possess, and control the Site, in accordance with the terms of the Concession Agreement for the purposes of the due implementation of this Project;

3.2.12 Neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof; without permission of the Authority;

3.2.13 To modify, adapt, upgrade or change the technology, from time to time, based on actual operations of the Processing Project Facility, Good Industry Practices and the requirements of the Project except in respect of the building by-laws, subject to no disruption in services and obligations;

3.2.14 To appropriate, possess and control and to further, at its sole discretion, utilize, renovate, modify, replace or demolish, free of any cost or charges or any liability for payment of compensation in respect thereof, all the buildings and structures and infrastructure that may be existing with reference to MSW management in the Project Area as of the date of this Agreement;

3.2.15 To receive the fiscal incentives and benefits accruing in respect of or on account of the Project including Carbon Credits / Certified Emission Reduction (CER's) under Clean Development Mechanism (CDM), and accrue benefits as per Clause 5.1.7 (hh).; in a ratio of 50:50, wherein half the proceeds shall be shared with the Authority

3.2.16 To sell power generated from the power plant to any buyer in accordance with Applicable Law.

3.2.17 To utilize the existing infrastructure like dumper bins, vehicles, transfer stations, etc., if available on an 'as is where is' basis.

3.3. Concession Period

The Concession is granted to Concessionaire for a period of 30 years commencing from the date of COD of the facility during which the Concessionaire is authorized to implement the Project on DBFOT model including management of all facilities and resources required for Integrated Management of Solid Waste in accordance with the provisions hereof. Specifically, construction must be completed within 24 months from handover of the site or getting Environmental Clearance and Consent to Establish, whichever is later, at which time a Construction Completion Certificate is issued. A three-month trial period shall then follow, culminating in the Trial Operations Completion Certificate and declaration of the Commercial Operation Date (COD). From COD, the O&M period runs for 30 years. After the 30 year period, the rights and obligations of the Authority as well as the Concessionaire shall only be limited to sanitary landfill management, for which the post-closure activities shall continue for 15 additional years, as per the Applicable Rules.

Provided that in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Compliance Date and ending with the Termination Date.

3.4. Renewal / Extension of Concession Period

The Authority may in its sole discretion, in the event the Concessionaire does not commit any Event of Default during the last [5 (five) years] of the Concession Period, may agree to extend the Concession after the expiry of the Concession

Period on same [or modified] terms and conditions for a term as mutually decided by the Parties by issuing a notice to the Concessionaire by no later than [6 (six)] months prior to the date of expiry of the Concession Period. Provided that any such extension shall also lead to an extension of license agreement(s) for an equal period so as to make the license agreement co-terminus with extended Concession Period. The same is subject to approval of the Authority.

ARTICLE 4 : CONDITIONS PRECEDENT

4.1. Conditions Precedent

4.1.1 Save and except expressly provided in this Agreement or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the obligations set out in this Clause 4.1 (the "Conditions Precedent"). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Articles 4.1.2 and 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Article 4.1.1.

4.1.2 Conditions Precedent for Authority

The Concessionaire may, upon providing the Performance Securities to the Authority in accordance with Article 9 and at any time after [15 (fifteen)] days from the Execution Date or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Article 4.1.2 within a period of [180 (one hundred and eighty)] days of receipt of the notice, or such longer period not exceeding [210 (two hundred and ten)] days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

a. Procured for the Concessionaire the Right of Way to the Site(s) in accordance with Article 10;

b. Provided land for setting up of Project Facilities vacant and free from Encumbrances and after requisite change in land-use; provided, however, the Authority may add the task of clearance of land for setting up of Project Facilities in the Scope of Work of this Agreement;

c. Executed and procured execution of Substitution Agreement;

d. Facilitated the Concessionaire in terms of obtaining all Applicable Permits from the Departments concerned/ Competent Authority, if requested by the Concessionaire, including permits in relation to environmental protection and conservation including but not limited to those specified in Schedule 2;

e. Undertake appointment of the Independent Engineer (IE) and the Project Management Unit;

f. execute the Substitution Agreement with the Concessionaire, Authority and the Lenders in the agreed form set out at Schedule 9; and

g. execute the Escrow Agreement with the Concessionaire, Authority, and the Escrow Bank in the agreed form set out at Schedule 17 and open the Escrow Account with the Escrow Bank; per Article 20;

h. Provided

- Access Roads to the Site as per Good Industry Practices.
- drainage up to the boundaries of the Site as per Good Industry Practices, however any discharge by the Concessionaire into the drains must be as per the Applicable Laws and regulations;
- power connection to the site, except infrastructure required for power evacuation, which shall lie in the scope of the Concessionaire;
- For supply of water to the Proposed Site, the Authority shall support in identification of potential sources and Right of Way for the same, however, the Concessionaire will be responsible for any all costs related to the same including but not limited to laying of pipelines and restoration of the surface in relation to the same.

i. The Authority shall provide assistance to obtain the required EC (Environment Clearances) for relevant facilities if required;

Provided, that upon request in writing by the Authority, the Concessionaire may, in its discretion, waive the Conditions Precedent set forth in this Article 4.1.2.

4.1.3 Conditions Precedent for Concessionaire

The Conditions Precedent required to be satisfied by the Concessionaire within a period of [90 (ninety)] days from the Execution Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- Provided to the Authority the copies (certified as true copies by an authorised officer of the Concessionaire) of the constitutional documents of the Concessionaire;
- Provided the Performance Securities to the Authority pursuant to Article 9;

- Prepared and submitted a detailed project report, covering technology proposed, demand assessment, technical feasibility, detailed cost estimates, capital investment plan, project financing details, revenue projections, environment & social impact assessment and detailed financial analysis, to the Authority, consistent with the technical plan submitted during the bidding stage within 3 (three) months from Compliance Date, and to get the DPR approved by the Authority within one month of submitting the DPR;

- Executed the Financing Agreements and delivered to the Authority [3 (three)] true copies thereof, duly attested by a director of the Concessionaire;

- Delivered to the Authority [3 (three)] true copies of the Financial Package and the Financial Model, duly attested by a director of the Concessionaire, along with copies of the Financial Model in an editable version either in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;

- Achieved financial closure i.e. procured and raised all the funds (debt, equity, etc.) necessary to finance the Project as per the timelines mentioned in Clause 12.1.2, as evidenced by the funding documents becoming effective and the Concessionaire having immediate access to the funds there under;

  Provided notarised true copies of its board resolution authorizing the execution, delivery and performance of this Agreement by the Concessionaire;

- Executed and procured execution of the Escrow Agreement with the Authority, and the Escrow Bank in accordance with Article 19 and Schedule 17;

- Procured all Applicable Permits unconditionally or if subject to conditions, then all such conditions required to be fulfilled under such Applicable Permits, have been fulfilled as on date the Concessionaire claims satisfaction of all the Conditions Precedent under this Agreement;

- Delivered to the Authority {from the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Article 7;

- Delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;

- Provided proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Concessionaire.

- Executed and procured execution of Substitution Agreement with the Authority and the Lenders in the agreed form set out in Schedule 9;

- Taken over vacant and unencumbered possession of all the Site(s) from the Authority;
- Procured at its own cost, water connection, power connection and other service connections to the Site;

Provided that upon request in writing by the Concessionaire, the Authority may in its sole discretion, waive fully or partially any or all the Condit ions Precedent set forth in this Article 4.1.

4.2. Satisfaction of Conditions Precedent

4.2.1 Each Party shall make all reasonable endeavors at its respective cost and expense to procure the satisfaction in full of the Conditions Precedent relating to it within a period of [180 (One Hundred & Eighty)] days from the Execution Date (the "Compliance Period") unless specified otherwise;

4.2.2 The later of the date within such time when the Authority or the Concessionaire fulfills its Conditions Precedent (unless the Authority waives the same for the Concessionaire) shall be the date from which the relevant and respective obligations of the Parties hereunder shall commence (the "Compliance Date"), respectively

4.2.3 Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.2.4 The Parties shall notify each other in writing at least [once a month] on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2.5 The Concessionaire shall, upon satisfaction or waiver, as the case may be, of all the Conditions Precedent, subject to confirmation by the Authority, notify the Authority of the occurrence of the Compliance Date.

4.3. Damages for delay by the Authority

Damages for delay by the Authority In the event that: (i) the Authority does not procure fulfillment or waiver of the Condition Precedent set forth in Article 4.1.2, within the period specified in respect thereof; and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force

Majeure Event, the Authority shall pay Damages to the Concessionaire of an amount calculated at the rate of [0.1% (zero point one per cent)] of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum amount equal to the bid security.

4.4. Damages for delay by Concessionaire:

Damages for delay by Concessionaire: In the event that: (i) the Concessionaire does not procure fulfillment or waiver of any or all of the Conditions Precedent set forth in Article 4.1.3 within the period specified in that Article; and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure Event, the Concessionaire shall pay Damages to the Authority of an amount calculated at the rate of [0.2% (zero point two per cent)] of the Performance Security for each day's delay until the fulfillment of the Conditions Precedent, up to the maximum amount equal to the bid security and upon reaching such maximum amount, the Authority may, in its sole discretion and subject to the provisions of Article 24, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfillment of the Conditions Precedent specified in Article 4.1.2, no Damages shall be due and payable by the Concessionaire under this Article 4.4 until the date on which the Authority shall have procured fulfillment of the Conditions Precedent specified in Article 4.1.2.

4.5. Commencement of the Concession Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Article 4.1, are satisfied or waived, as the case may be, shall be the Compliance Date which shall be the date of the commencement of the Concession Period. The Concession Period shall be of 30 years from COD, excluding 24 months for the construction of the facilities for Processing & Disposal of MSW.

For avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Compliance Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence development of the Project in accordance with the terms of this Agreement.

4.6. Non-Compliance with Conditions Precedent

4.6.1 In the event the Conditions Precedent for Concessionaire have not been satisfied within the stipulated time and the Authority has not waived, fully or partially, such

conditions relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and the Authority shall not be liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it;

4.6.2 In the event this Agreement fails to come into effect on account of non-fulfillment of the Concessionaire's Conditions Precedent, the Authority shall be entitled to forfeit and encash the Performance Security;

4.6.3 In the event the Conditions Precedent for the Authority have not been satisfied within the stipulated time, then the Concessionaire shall have the option to either: (i) mutually extend the time period for satisfaction of the Conditions Precedent for the Authority or (ii) terminate this Agreement. In the event of termination, the Authority shall pay to the Concessionaire, reasonable development costs, as determined basis Article 25. In case of extension of time period for fulfilment of Conditions Precedent for the Authority beyond a period of 180 (one hundred and eighty) days from the Compliance Date, the Concession Period shall be proportionately extended for the same period. Parties hereby agree that for determination of the said development cost, Article 25 shall be referred;

4.6.4 In the event this Agreement fails to come into effect on account of the non-fulfillment of the Authority Conditions Precedent, the Authority shall in addition to payment of Development Cost in terms of Article 4.6.3 above, shall return the Performance Securities to the Concessionaire; provided there are no outstanding claims of the Authority on the Concessionaire.

4.7. Termination upon Delay:

4.7.1 Without prejudice to the Damages for delay prescribed in Articles 4.3 and 4.4 above, the Parties expressly agree that in the event the Compliance Date does not occur, for any reason whatsoever, within a period of [180 (one hundred and eighty)] days from the Execution Date or the extended period provided in accordance with this Agreement, then all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire and the Agreement may be terminated by the non-defaulting Party. Provided, however, that in the event the delay in occurrence of the Compliance Date is for reasons

attributable to the Concessionaire, the Performance Security or the bid security, as the case may be, of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

4.7.2 Instead of terminating this Agreement as provided in Article 4.7.1 above, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent. In the event of such extension in time for fulfilling Conditions Precedent, the Concession Period shall also be extended proportionately.

ARTICLE 5 : OBLIGATIONS OF THE CONCESSIONAIRE

5.1. General Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, implement the Project, procure finance for and undertake the development, engineering, procurement, equipping, operation and maintenance of the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 Perform and fulfill all of the Concessionaire's obligations with respect to the Project set out in Schedule 1 and under this Agreement;

5.1.3 The Concessionaire shall arrange for and procure, at its own cost and risk, all infrastructure facilities and utilities for the construction, development, operation and maintenance of the Project, including procuring connection for and supply of electricity, water, gas and other utilities as may be necessary or required for the operation of the Project. The Authority shall only provide support for utilities like access roads, drainage, power, water as per Clause 4.1.2. (h). The Concessionaire shall obtain all Applicable Permits and comply with the conditions there under for the procurement and use of such infrastructure facilities and utilities.

5.1.4 During the Concession Period, the Concessionaire shall obtain from the relevant Government Instrumentalities, the Applicable Permits (other than the Applicable Permits required to be obtained by the Authority under Article 4.1.2) and keep in force and comply with the conditions of all Applicable Permits for the development, Operation and Maintenance of the Project.

5.1.5 The Concessionaire shall comply with all Applicable Laws (including without limitation all public and labour related laws and health, safety, and sanitation laws,

as then in force) and conditions of all Applicable Permits (including keeping them valid and in force as required) while performing its obligations under this Agreement. Further, the Concessionaire shall ensure and procure that its Contractors, if any, comply with all Applicable Permits and Applicable Laws during their performance of any of the Concessionaire's obligations under this Agreement.

5.1.6 The Concessionaire shall procure that its Sub-Contractors, if any, shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person. For the purpose of this Agreement, the discharge of obligations by the Sub- Contractors shall be the obligation of the Concessionaire.

5.1.7 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- perform and fulfill its obligations under the Financing Agreements;
- carry out comprehensive waste management facilities as stated in tender document by employing environment-friendly technologies which are not potentially detrimental or pose harm or risk to the Project Area and beyond;
- maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and be solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby agrees to keep Authority indemnified against any claims, damages, expenses or losses in this regard and in no case and for no purpose shall the Independent Engineer/ Authority be treated as the employers of the Concessionaire, in this regard;
- not do or omit to do any act, deed or thing which may in any manner violates any provision of this Agreement;
- always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement or Applicable Laws and Applicable Permits;
- procure that all equipment and facilities comprising the Project are developed, operated and maintained in accordance with the Specifications and Standards, Maintenance

Requirements, Safety Requirements as specified in Schedules 3,4 and 5 and Good Industry Practice;

- support, cooperate with and facilitate Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- to comply with the time lines for setting up the Project Facilities;
- endeavour to improve the ancillary conditions and infrastructure related to the Project including assistance to informal recycling workers, procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- right to enter into sub-contracts for the purposes of and subject to the terms of this Agreement;
- for comprehensive waste management facilities as stated in tender document, develop, construct and operate the Processing Facilities and Sanitary Landfill Site at the allocated site in conformity with the terms of this Agreement for processing of municipal waste and disposal of residual inert matter and rejected waste;
- be responsible for all the health, security, environment and safety aspects of the Project at all times during the Concession Period;
- ensure that the Project remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- upon receipt of a request thereof, afford access to the Project to the authorised representatives of the Independent Engineer/ Authority for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;
- bear all expenses towards uniforms, safety gear and waste handling equipment to all the waste lifters and drivers;
- ensure that the project is operational on all calendar days of the year;
- be responsible for the conduct of its staff employed for this project while on duty;
- shall obtain approval from transport department as applicable and obtain fitness certificate for the vehicles each year before the due date and shall bear any cost or expense associated with this;
- to operate, maintain, repair and renovate the project assets and project facilities, in accordance with, inter alia, the Applicable Laws, Applicable Permits and the requirements;

- submit the Operational Plan to the Authority at least 1 (one) month before proposed Commencement Date and get the same approved;
- commence Secondary Collection and Transportation of the Solid Waste from the Designated Transfer Stations within the Project Area at least [90 (ninety)] days prior to COD, or within 90 (ninety) days from the date of handover of the Transfer Station in the
- intimate to the Independent Engineer, the Authority, the date of commencement of the Secondary Collection and Transportation (the "Commencement Date") at least 2 (two) weeks in advance;
- procure, acquire and put into place at its own cost and expenses all the Project Assets and Project Facilities required by the Concessionaire to implement the Project during the Pre- COD Period so as to achieve COD within the time stipulated in this Agreement;
- promptly rectify and remedy any defects or deficiencies, at its own cost, if any pointed out by the Independent Engineer in the Inspection Report and furnish a report within the stipulated time period in respect thereof to the Independent Engineer;
- comply with all the performance parameters as specified in KPIs, set forth in Article 19;
- to carry out all necessary test(s) and get the approvals as per Applicable Law and in conformity with Good Industry Practices, prior to achieving COD;
- pay all taxes, duties and outgoings, including utility charges relating to the project;
- handover/transfer the Sites and immovable Project Facilities to tue Authority upon Termination of this Agreement, in accordance with the provisions thereof;
- provide live GPS feed of movement of transportation vehicles, camera feeds at weighbridge of Site to the Independent Engineer, as and when sought by the Independent Engineer;
- be responsible and indemnify the Authority for any accident due to negligence or otherwise in the performance of the project; and
- submit compliance as required to environmental agency and shall provide all information related to project as would be required by the Independent Engineer/ Authority pursuant to any RTI query or any issue raised in State Assembly/ Parliament;
- The Concessionaire shall at its cost; expenses and risk make such financing arrangements as would be necessary to implement the project and to meet all its obligations under this Agreement, in a timely manner;

- The Concessionaire shall, at its own costs endeavor to obtain the carbon credits for the project by adopting the greenhouse gas mitigation measures conforming with the specifications suggested and shall also carry out all such activities including preparation of design report under Clean Development Mechanism. The Concessionaire shall share benefit of such carbon credits as per GOI green initiative orders., accruing to the project during the Concession. Concessionaire will be given 50% percent of the revenues from carbon credits and 50% of the revenues shall be retained by the Authority.

5.2. Obligations relating to Project Agreements

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement. Notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or any other agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 Before finalization, the Concessionaire shall submit to the Authority the drafts of all Project Agreements and the operation & maintenance contract (if any) or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments and observations, if any, to the Concessionaire. Concessionaire shall appropriately make amendments as per review/comments/observations and re-submit the same to the Authority for its review. Within [7 (seven)] days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For avoidance of doubt, it is agreed that the review and comments/ observations by Authority on any Project Agreement or failure or omission of Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by BBMP/ Authority. No observation and/or review of Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and/or liabilities under this Agreement in any manner whatsoever nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if

such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against Authority. For avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on any of the Project Assets as the case may be, without prior written approval of Authority, which approval the Authority may, in its discretion, deny if such sub-lease, sub- license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of Authority under this Agreement or Applicable Laws.

5.2.5 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "Covenant"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding [90 (ninety)] days from the Termination Date, the Project Agreements shall be deemed to cease to be in force and effect on the Termination Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to Authority , from the counter party(ies) of each of the Project Agreements, where such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.3. No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent

performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- Force Majeure Event, subject to Article 21;
- Authority Event of Default;
- Compliance with the instructions of the Independent Engineer/ Authority or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;

5.4. Concessionaire's Representative

To fulfill the Concessionaire's obligations and for implementation of the Project in accordance with this Agreement, the Concessionaire shall deploy representative(s) (the "**Concessionaire Representative**") on its behalf including a team leader (the "**Team Leader**"). The Team Leader shall have full authority to act on behalf of the Concessionaire for all matters relating to this Agreement and shall be an overall in charge to ensure implementation of the project in accordance with the provisions hereof. The Team Leader shall closely co-ordinate with the Independent Engineer/Authority and shall be responsible to ensure redressal on an immediate basis, any objections, observations, shortcomings, defects or defaults pointed out by the Independent Engineer during routine inspections and project review meetings and submit action take report to the Independent Engineer/Authority within a period not later than 7 (seven) days from the date of conveying of such defect/shortcoming. The Team Leader or its nominee shall make themselves available for meetings as and when called upon by the Independent Engineer, the Authority.

5.5. Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Independent Engineer/ Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.6. Engagement of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance

of its obligations under this Agreement are at all times properly skilled and trained for their respective functions.

5.7. Equity Lock-in requirements

The Concessionaire acknowledges that:

5.7.1 The Selected Bidder shall hold [100% (one hundred per cent)] shareholding in the paid-up Equity capital of the Concessionaire until expiration of [1 (one)] year from COD, [51% (fifty one per cent)] shareholding in the paid-up Equity capital until expiration of [10 (ten)] years from COD and thereafter [26% (twenty six per cent)] shareholding in the paid up equity capital during the remaining Concession Period.

Provided that in case the Selected Bidder is a Consortium of entities, then the lead member (the "Lead Member") of such Consortium and the member whose credentials were considered for prequalification for bid, shall have the majority equity share holding of the paid-up Equity capital of the Concessionaire and that all the members of the Consortium together shall hold [100% (one hundred per cent)] Equity capital of the Concessionaire, until expiry of [1 (one)]year from COD, [51% (fifty one percent)]shareholding in the paid-up Equity capital until expiration of [10 (ten)]years from COD and thereafter [26% (twenty six per cent)] shareholding in the paid-up Equity capital during the remaining Concession period. Provided further that a member of the Consortium meeting either the Technical Capacity or the Financial Capacity shall subscribe at least 10% (ten per cent) of the paid-up and subscribed Equity of the SPV until the 2nd (second) anniversary of the COD for member meeting the Technical Capacity and until the 1st (first) anniversary of the COD for the member meeting the Financial Capacity.

5.7.2 Any violation in the shareholding pattern in the equity lock-in requirements would be treated as Concessionaire Event of Default.

5.7.3 **Exit from Consortium**

5.7.3.0 X

5.7.3.1 Any Consortium member other than the Lead Member shall be allowed to exit the Consortium anytime during the Concession Period post-COD and the Lead Member will be allowed to replace/absorb the shares and responsibilities of other Consortium members, subject to approval from the Authority which will not be unreasonably with held.

5.8. Obligations relating to management of the Concessionaire

5.8.1 The Concessionaire shall not, without the prior written approval of the Authority, undertake or cause to be undertaken, any action for all or any of the following or any matter incidental or consequential thereto:

- to alter or add to the provisions of the memorandum of association;
- to alter or add to the articles of association; to change the name of the Concessionaire;
- to reduce the share capital;
- to commence any new lines of business;
- to enter into any contract or agreement with a related party with respect to such related party's appointed to any office or place of profit in the company, its subsidiary company or associate company;
- to make inter-corporate-loans and investments or guarantee or security (except where such security or payment is to be made to Authority) to be given, if the aggregate amount thereof, exceeds the limit of [30% (thirty per cent)] of the Concessionaire's paid- up share capital;
- to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy Code, 2016;
- for various other matters pertaining to the winding up of the Concessionaire; and
- any other matter which is required by the Companies Act to be passed by a special resolution of the shareholders of the Concessionaire.

For the purposes of this clause, a "related party" shall have the meaning ascribed to it under the Companies Act, 2013.

5.9. EHS Standards and L&FS Standards

5.9.1 The Concessionaire shall at all times and throughout the Concession Period comply with Applicable Laws including the relevant Environmental, Health and Safety (the "EHS") Rules and Regulations and life and fire safety Standards (the "L&FS Standards").

5.9.2 The Concessionaire shall prepare and comply with the performance standards, including an environmental and sustainability plan stating how the Concessionaire intends to manage and mitigate risks in relation to EHS. Such performance

standards shall take into consideration the principles set out in:

- National EHS regulations;
- Real Estate (Regulation and Development) Act, 2016;
- National Building Code of India published by BIS and other statutory BIS standards applicable to projects of similar nature; and
- L&FS Standards, Department of Factories Boilers Industrial Safety & Health

5.10. Obligations relating to Taxes

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all Taxes, levies, duties, cesses and all other statutory charges payable in respect of the Project.

5.11. Obligations relating to information

5.11.1 Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Concessionaire shall provide such information to the Authority forthwith and in the manner and form required by the Authority.

5.11.2 After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Concessionaire's activities under or pursuant to this Agreement which the Authority proposes to publish, the Concessionaire shall provide such comments to the Authority in the manner and form required by Authority.

5.12. Obligations relating to other charges

The Concessionaire shall make timely payments for all utility services in respect of the Sites, including water, sewage, electricity, telecommunication, internet and cable charges, etc. on its own account.

5.13. Project Implementation: Operation and Maintenance

- The Concessionaire shall operate and maintain the Project Facilities in accordance with the this Agreement.
- The Concessionaire may undertake operations and maintenance of the Project Facilities

by itself or through a Contractor possessing requisite technical, financial, and managerial expertise/ capability; but in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.

- The Concessionaire shall, for Operations and Maintenance;
  - Have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Independent Engineer/Authority and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - Construct, provide and maintain a reasonably furnished site office for the Independent Engineer, at the Project Site;
- For the purposes of determining that the Construction Works and Project Facilities are being maintained in accordance with the Construction Requirements and O&M Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with the instructions and under the supervision of the Independent Engineer. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- Conduct all Tests to ascertain compliance with Construction Requirements and Measurements.
- In the event the Concessionaire has failed to operate and maintain the Project in accordance with the O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the Independent Engineer or Authority ("Notice to Remedy"), Authority may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to operate and maintain the Project or cause to repair and maintain the Project Facilities, under the supervision of Independent Engineer, at the risk and cost of the Concessionaire. The Concessionaire shall reimburse all costs incurred by the Authority on account of such operation and maintenance or repair and maintenance, and as certified by Independent Engineer, within 7 days of receipt of Authority's claim therefore.
- The Concessionaire shall be deemed to be in material breach of O&M Requirements if the Independent Engineer acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire:
- There has been failure/undue delay in carrying out scheduled/planned maintenance or the scheduled/planned maintenance has not been carried out in accordance with the

O&M Requirements;

- The maintenance of the Project Facilities or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
    - There has been a serious or persistent let up in adhering to the O&M Requirements and thereby the Project Facilities or any part thereof is not safe for operations;
    - There has been a persistent breach of O&M Requirements. For avoidance of doubt, persistent breach shall mean:
- Any breach of O&M Requirements by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the Independent Engineer / Authority;
- Recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the Independent Engineer/Authority; requiring the Concessionaire to remedy a breach, and
- Repeated occurrence of a breach notwithstanding those earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

5.14. Additional Obligations of Concessionaires

- Maintenance of Records & Operations Plan

The Concessionaire shall maintain records of the quantum (measured in tons) of waste reaching the transfer stations, Integrated Processing & Disposal Facility, or any other facilities under this agreement with the Authority. The record shall comprise waste processed, rejects disposed to the landfill facility, daily counter checked by the Independent Engineer or his representative and provide monthly, quarterly, and annual reports of the same to the Independent Engineer and Authority along with any other sought by Independent Engineer/Authority.

The Concessionaire shall, within 30 days of the appointment ("Effective Date") also submit an Operations Plan to the Independent Engineer or to Authority, in conformity with the guidelines indicated in **Schedule 22.**

Within 15 days of receipt of Operations Plan from Concessionaire, the Independent Engineer shall review the Operations Plan also keeping in view the comments of Authority, if any. The Independent Engineer should provide its observations/comments on the Operations Plan to Concessionaire within such specified period of 15 days, Concessionaire shall after discussions, finalize the

Operations Plan after taking due considerations of comments/observations from the Independent Engineer.

If Independent Engineer does not provide its comments within 15 days, Concessionaire shall be entitled to go ahead with the proposed Operations Plan. Notwithstanding any review or failure to review the operations plan by the Independent Engineer or Authority, Concessionaire shall be solely responsible for the adequacy of the Operations Plan and the conformity thereof with the guidelines for O&M Requirements, and the Concessionaire shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.

- Disposal of Hazardous Waste

The Authority and Concessionaire hereby agree that at times, some hazardous or Bio Medical waste may get mixed with MSW and as Concessionaires is unauthorized to process/dispose of

hazardous waste or biomedical waste in the project, such hazardous waste shall be separated out from MSW and shall be handed over to Authority for appropriate collection, safe handling, transportation, and disposal as per the relevant rules with authority cost and risk. The Concessionaire shall inform Authority of having found any such hazardous waste and it shall be authority' responsibility to collect and transport such hazardous waste from the site, within 24 hours of such information by Concessionaire.

- Development of Site

Concessionaire shall, after obtaining the vacant possessions of the Site in accordance with the provisions of the Article 10 above and subject to the other provisions of this Agreement, commence development and improvement on the Site as required to implement the Project and to construct the Project Facilities in accordance with the provisions of this Agreement, including construction of internal roads at the site, fencing, greenery, etc. Concessionaire may use, free of any charge, any debris that may be available at the Site for constructing internal roads, as also the building/structures and infrastructure existing on the site.

- Compliance to Environmental Laws

Concessionaire undertakes to establish a fully equipped laboratory to monitor the quality of Water, Air, Soil, and impact of the Project.

- Detail Project Report Cum Implementation Plan

Concessionaire shall ensure that it undertakes the Construction and Commissioning of the plant in accordance with the implementation plan that shall be submitted to the Authority by Concessionaire within 90 (Ninety) days of the signing of Concession Agreement.

ARTICLE 6 : OBLIGATIONS OF AUTHORITY

6.1. General Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement.

6.1.2 Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform the following:

- identify and earmark / allocate parcel(s) of land, by itself, within or outside the Project Area for the purpose of setting up of Project Facilities for scientific management of Solid Waste;
- undertake Secondary Transportation till the handover of Transfer Stations to the Concessionaire; undertake Processing and Disposal of Solid Waste until the COD;
- upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project, subject to the Concessionaire submitting its applications complete in all respect in a timely manner. The Authority agrees and undertakes that it shall not unreasonably delay or withhold provision of any such reasonable support or assistance to the Concessionaire;
- upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- provide the Sites on leave and license basis free from Encumbrance to the Concessionaire and ensure that no barriers are erected or placed on or about the Sites by any Government Instrumentality or persons claiming through or under any Government Instrumentality, except for reasons of Safety Requirements, Emergency, national security, or law and order;
- not do or omit to do any act, deed or thing which may in any manner violate the provisions of this Agreement;
- support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;

- upon written request from the Concessionaire, execute the Substitution Agreement;
- engage an independent monitoring and appraisal entity (Independent Engineer) who shall monitor, supervise, and review Concessionaire's progress details/activities. The Concessionaire shall submit monthly reports to the Independent Engineer regarding progress of the Project. The Independent Engineer shall validate the data provided by the Concessionaire in monthly progress reports;
- undertake on its own or through the Independent Engineer, the development and management of ICT (Information Communication and Technology) and IoT (Internet of Things) based infrastructure (including sensors and video analytics) for monitoring the project, including but not limited to, GPS tracking of vehicles, Sensor based weight measurement in transportation vehicles, electronic weigh bridges at Site, surveillance cameras at Sites, etc., and a central command center;
- make timely payments as prescribed in Article 18;
- observe and comply with all obligations set forth in this Agreement, and any other Agreement to be executed with the Concessionaire;
- handover to the Concessionaire within [24 (twenty four) months] of the Execution Date, the existing infrastructure of Secondary Transfer Stations on an as is where is basis, if any;
- facilitate in a timely manner all such approvals, permissions and authorisations which Concessionaire may require or is obliged to seek from them under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorization for availing permits for utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by the Authority within [30 (thirty)] days from receipt of such request from the Concessionaire, subject to the conditions of the applications / details submitted being complete and correct.
- approve the Operational Plan within [a week] of its submission by the Concessionaire;
- maintain the Minimum Escrow Balance;
- Provide Minimum Waste Guarantee to the Concessionaire; this shall be equal to 50% of the Planned P&D Capacity for the first 5 years, and equal to 75% of the Planned P&D Capacity thereafter. This shall include the waste from Bulk Waste Generators, if any, accepted for processing by the Concessionaire.
- The Authority shall publish the gazette notification for the bulk waste generators specifying about the empanelment of the Concessionaire as an Authorized Waste Processor for bulk waste, after COD is achieved.

6.2. Obligations relating to refinancing – NOT APPLICABLE

ARTICLE 7 : REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

7.1. Representations and Warranties of the Parties

Each Party represents and warrants to the others that:

- It is duly organized, validly existing and in good standing under the laws of India;
- It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery, and performance of this Agreement;
- It has the financial standing and capacity to undertake the Project;
- This Agreement constitutes its legal, valid, and binding obligation fully enforceable against it in accordance with the terms hereof;
- It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof; and
- It shall have an obligation to disclose to the other Party as and when any of its representations and warranties cease to be true and valid.

7.2. Representations and Warranties of Concessionaire

The Concessionaire represents and warrants to Authority that:

- It is duly organized, validity existing and in good standing under the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- It has taken all necessary corporate and other action under Applicable laws and its constitutional documents to authorize the execution, delivery, perform its obligations under this Agreement;

- It has the financial standing and capacity to undertake the Project accordance with the terms of this Agreement;
- This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- all undertakings and obligations of the Concessionaire arising from the {RFP/RFQ} or otherwise shall be binding on the Concessionaire as if they form part of this Agreement;
- it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- the information furnished in the Bid and as updated on or before the Execution Date is true and accurate in all respects as on the Execution Date;
- The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of Concessionaire's 'Memorandum and Articles of Association' or any of the Applicable laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- There are no actions, suits, proceedings or investigations pending, or to Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect n its ability to perform its obligations under this Agreement;

- the SPV is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement pursuant to the LOA, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- all its rights and interests in the Project shall pass to and vest in the Authority on the Termination Date free and clear of all liens, claims and Encumbrances without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it Subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- no representation or warranty given by it contained herein or in any other document furnished by it to the Authority, including the Bid or to any Government Instrumentality in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;
- no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith
- all information provided by the Concessionaire in response to the {Request for Proposals/Qualification} or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- agree that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or government acts;
- consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings; and
- the Concessionaire shall not venture into or continue any business which is in direct or indirect competition with the Project. In the event the Concessionaire engages in such activities, the same shall constitute a fundamental breach of this Agreement by the Concessionaire;
- all undertakings and obligations of the Concessionaire arising from the {Request for Proposals/Qualification} or otherwise shall be binding on the Concessionaire as if they form part of this Agreement

- further representations as may be added depending on the specific circumstances of the Concessionaire.
- Concessionaire agrees to indemnify, and hold indemnified the Authority against all cost, expenses, penalties arising out of:
    - Operations of the project facilities under this Agreement.
    - Compliance with all labor laws and all possible claims and employment related liabilities of its staff employed in relation with the project.

7.3. Representations and warranties of Authority

The Authority represents and warrants to Concessionaire that:

- it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise the rights and perform the obligations specified under this Agreement on behalf of the Authority.
- it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement.
- it has the financial standing and capacity to perform its obligations under this Agreement.
- this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;

7.4. Representations and Warranties of the State Government

[Deleted]

7.5. Disclosure

- In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of it. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy, or

obligation of a Party under this Agreement.

- Neither the Authority nor any of its agents or employees shall be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
  - any inaccuracy, omission, unfitness for any purpose of inadequacy of any kind whatsoever in the data disclosed by the Authority to the Concessionaire in relation to the Project; and/or
  - any failure to make available to the Concessionaire any materials, documents, drawings, plans, or other information relating to the Project.

ARTICLE 8 : DISCLAIMER

8.1. The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Authority makes no representation whatsoever, express, implicit, or otherwise, regarding the accuracy, adequacy, correctness, reliability or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.

8.2. The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake, or error in or relating to any of the matters set forth in Article 8.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to

the Concessionaire, Associates or any person claiming through or under any of them.

8.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 8.1 above shall not vitiate this Agreement or render it voidable.

8.4. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 8.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Article 8.4 shall not prejudice the disclaimer of the Authority contained in Article 8.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

8.5. The Concessionaire accepts that it is solely responsible for the verification of any design, data, documents, or information provided by the Authority, any Authority related parties or their consultants and advisors to the Concessionaire and that it shall accept and act thereon at its own cost and risk.

8.6. The Concessionaire shall be solely responsible for the contents, adequacy and correctness of the design, data, drawings, and detailed engineering prepared or procured by the Concessionaire for implementing the Project.

ARTICLE 9 : PERFORMANCE SECURITIES

9.1. Performance Security

9.1.1 The Concessionaire shall for the due and punctual performance of its obligations hereunder relating to the Project simultaneously with the execution of this Agreement, furnish an unconditional and irrevocable bank guarantee, in favor of the Authority, in the form as set out in Schedule 21, (the "Performance Security") for a sum of corresponding to [5% (five per cent)] of the Total Project Cost (based on the capital costs mentioned in the RFP document) during construction & mobilization period till Commercial Operation Date of the Project. Post-COD, the Performance Security shall be reduced to 25% (twenty-five per cent) till the end of Concession Period or till the Termination Date, as the case may be For the purpose of the submission of Performance Security, Surety Bonds shall also be accepted by the Authority

9.1.1 The amount equivalent to 75% of the Performance Security or the amount retained by the Authority as cash security shall be returned after the expiry of 30 (thirty) days from the COD, unless this Agreement is terminated earlier, in which case the Performance Security will be returned within 30 (thirty) days from the date of termination, subject to the Authority's right to receive any amounts from the Concessionaire under this Agreement. The remaining 25% shall be released within 30 (thirty) days from the expiry of the contract, or from the date of termination, as the case may be.

9.1.2 The Performance Security shall secure the due performance of all the Concessionaire's obligations throughout the Concession Period, especially the Construction Period.

9.2. ESHS Performance Security

9.2.1 The Concessionaire shall have submitted to the Authority, prior to the Execution Date an unconditional and irrevocable bank guarantee for an amount corresponding to [1% (one percent)] of the Project Cost (the "ESHS Performance Security").

9.2.2 The ESHS Performance Security shall be valid until the Termination of the Agreement. The ESHS Performance Security shall have an initial validity period till COD, which must thereafter be renewed on a year-on-year basis, before the expiry of the 11th (eleventh) month of the relevant year, until the expiry of the O&M period. If any of the ESHS Performance Security is not renewed by the expiry of the 11th (eleventh) month of the relevant year, then the Authority shall be entitled to drawdown the total amount available under the ESHS Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the ESHS Performance Security.

9.2.3 The ESHS Performance Security shall secure the due performance of the Concessionaire's ESHS obligations during the Construction Period and O&M period, as set out in the approved ESHS Documents.

9.3. Operation & Maintenance Period Security

9.3.1 As Condition Precedent to the COD, within 60 (sixty) days of the Construction Completion Date, or 30 (thirty) days before COD, whichever is earlier, the Concessionaire shall furnish an unconditional and irrevocable bank guarantee to the Authority, for an amount corresponding to [4% (four per cent)] of the Project Cost

(the **"O&M Security"**). This amount shall be equal to an amount corresponding to [4% (four per cent)] of the Payable Tipping Fee of the Previous Year (excluding any penalties, etc.). For the First Year after COD, this amount shall be equal to 4% of the Tipping Fee multiplied by the Project Design Capacity.

For the Last Year of the Concession, the validity of the O&M Security shall be such that it will be 100% valid and released in equal annual installments over the next 15 years subject to the post-closure activities being carried out satisfactorily.

9.3.2 The Concessionaire shall furnish the O&M Security in the same format as provided for the Performance Security in the RFP, with necessary modifications. The Concessionaire shall maintain the O&M Security in full force and effect until the expiry of the O&M Period. The O&M Security shall have an initial validity period of 1 (one) year, which must be renewed on a year-on-year basis, before the expiry of the 11th (eleventh) month of the relevant year, until the Termination or expiry of the Concession Agreement.

9.3.3 The O&M Security shall secure the due performance of all the Concessionaire's obligations during the O&M Period.

9.4. Extension of Performance Securities

9.4.1 If the Performance Security is scheduled to expire before the COD, then the Concessionaire shall arrange for an extension of the Performance Security at least 30 (thirty) days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, the Authority shall be entitled to drawdown the total amount available under the Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Performance Security, that is scheduled to expire.

9.4.2 If the ESHS Performance Security is scheduled to expire before the expiry of the O&M period, the Concessionaire shall replace or arrange for an extension of the ESHS Performance Security at least 30(thirty) days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, the Authority shall be entitled to drawdown the total amount available under the ESHS Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the ESHS Performance Security.

9.4.3 If any O&M Security is not renewed by the expiry of the 11th (eleventh) month of the relevant year of the O&M period, then the Authority shall be entitled to drawdown the total amount available under the O&M Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the O&M Security.

9.5. Encashment of Performance Securities by the Authority

9.5.1 The decision of the Authority as to any breach/ delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Concessionaire and the Concessionaire specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Authority under this Concession Agreement is required to be provided in connection with any demand made by the Authority to recover such compensation through appropriation of the relevant amounts from the Performance Security/ O&M Security/ESHS Performance Security under this Agreement.

9.5.2 In the event of encashment of the Performance Security/O&M Security/ESHS Performance Security by the Authority, in full or part, the Concessionaire shall within 15 (fifteen) days of receipt of the encashment notice from the Authority provide a fresh Performance Security/ O&M Security /ESHS Performance Security or replenish (in case of partial appropriation) the existing Performance Security, as the case may be. The provisions of this Article shall apply *mutatis mutandis* to such fresh Performance Security/O&M Security/ESHS Performance Security. The Concessionaire's failure to comply with this provision shall constitute a default or breach of the Concession Agreement by the Concessionaire, which shall entitle the Authority to terminate this Concession Agreement in accordance with the provisions hereof.

Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall subject to the Authority's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

9.6. Utilization of retained amount

9.6.1 The Authority shall be entitled to utilize the retained amount in the same manner as

it would utilize the Performance Security, the ESHS Performance Security or the O&M Security, as the case may be.

- Upon receipt of a renewed or replacement Performance Security within 30 (thirty) days of the COD or expiry / termination of the Agreement, the Authority shall return the unutilized cash security amount for the Performance Security to the Concessionaire.
- Upon receipt of a renewed or replacement ESHS Performance Security within 30 (thirty) days of the expiry / termination of the Term, the Authority shall return the unutilized cash security amount for the ESHS Performance Security to the Concessionaire.
- Upon receipt of a renewed or replacement O&M Security within 30 (thirty) days of the expiry / termination of the O&M period, the Authority shall return the unutilized cash security amount for the O&M Security to the Concessionaire.
- The interest earned on any retained amounts on cash security shall be the property of the Authority and the Authority shall not be required to account to the Concessionaire for any such interest.

9.6.2 The Authority shall have the right to draw on the Performance Securities and claim up to the amount guaranteed upon the Concessionaire's failure to satisfy any Condition Precedent or honour any of its obligations, responsibilities or commitments during the Construction Period (or until the Termination Period, in case the other Security falls short), or any amount due and payable by the Concessionaire to the Authority (including any Delay Liquidated Damages), in accordance with this Agreement.

9.6.3 The Authority shall have the right to draw on the O&M Securities and claim up to the amount guaranteed upon the Concessionaire's failure to honour any of its obligations, responsibilities or commitments during the O&M period, or any amount due and payable by the Concessionaire to the Authority (including any Liquidated Damages), in accordance with this Agreement.

9.6.4 Without prejudice to its right to draw on the Performance Securities or, as the case may be, the O&M Securities, the Authority shall have the right to draw on the ESHS Performance Securities and claim up to the amount guaranteed upon the Concessionaire's failure to honour any of its ESHS related obligations, responsibilities or commitments during the Construction Period or the O&M period, as set out in the approved ESHS Documents, in accordance with this Agreement.

9.6.5 Bank Guarantees would not be released in case of breach by the Concessionaire of

any of the terms of the Agreement.

9.7. Cost to be borne by Concessionaire

The cost of procuring the Performance Security, the ESHS Performance Security and the O&M Security shall be borne solely by the Concessionaire.

9.8. Demand under Performance Securities

9.8.1 The Authority shall not be required to give any prior notice to the Concessionaire of its intention to make a demand under the Performance Securities, the ESHS Performance Securities or the O&M Securities, as the case may be. However, the Authority shall provide the Concessionaire with a copy of any demand notice issued by them under the Performance Securities, the ESHS Performance Securities or the O&M Securities, simultaneously with the issuance of the demand notice to the Scheduled Bank that has issued the relevant Performance Security, ESHS Performance Security or the O&M Security.

9.8.2 If the Authority makes a demand under any Performance Security and/or ESHS Performance Security and/or O&M Security, in part or in full, the Concessionaire shall immediately and in no event later than 15 (fifteen) days of such demand, restore the value of such Performance Security, ESHS Performance Security or O&M Security to the amount stated in Sub-Clauses 9.1.1, 9.2.1 and 9.3.1.

9.9. Release of Performance Security by the Authority

9.9.1 Within 30 (thirty) days from the COD or the termination of this Agreement, whichever is earlier, the Performance Securities or, as the case may be, the amount retained by the Authority as cash security, shall be released to the Concessionaire after the expiry of 30 (thirty) days from the COD or termination of this Agreement, subject to the Authority's right to receive any amounts from the Concessionaire before or upon COD or Transfer Date.

9.9.2 Upon the expiry of the O&M period or the termination of this Agreement, whichever is earlier, O&M Securities, the ESHS Performance Securities or, as the case may be, the amount retained by the Authority as cash security, shall be released to the Concessionaire after the expiry of 30 (thirty) days from the Termination of this Agreement, subject to the Authority's right to receive any amounts from the Concessionaire before or upon Transfer Date.

9.10. Mobilization Advance Guarantee (Deleted)

9.11. Technology Performance Security (Deleted)

9.12. Additional Performance Security

[Deleted]

ARTICLE 10 : THE SITES

10.1. The Sites

10.1.1 The Sites of the Project Facilities shall comprise of the land as described in Schedule 8, and in respect of which the Rights of Way shall be provided and granted by the Authority to the Concessionaire on a leave and license basis under and in accordance with this Agreement (the "Sites").

10.1.2 The Sites would include (but not limited to) land for setting up of Project Facilities relating to Processing & Disposal Facility which shall be provided by the Authority for the establishment of the Processing & Disposal units as per this Agreement.

10.1.3 Without prejudice and subject to the Agreement, the ownership of the Project except Sites, including all improvements made therein by the Concessionaire, during the Concession Period, shall at all times remain with the Concessionaire.

10.1.4 Vesting of Site to Concessionaire: The Authority shall provide land for processing facilities for each package for permissive use only. Additional land, if available and required, may be provided to Concessionaire on a permissive use basis for this Project by the Authority. Furthermore, Concessionaire/Authority shall have the full right to regulate the entry into and use of the Site. The land shall be provided to Concessionaire as per the Obligations of the Authority.

It is to be noted that any land, vehicles, machinery, equipment, etc. handed over by the Authority to the Concessionaire shall only be on a permissive use basis and shall remain the property of the Authority.

10.2. Grant of License over the Site

10.2.1 The sites for the establishment of the facilities shall be given on permissive use basis only. The Authority shall grant the Concessionaire a license over the Site along with all necessary Rights of Way, to enter upon, access and occupy the Sites, free of all Encumbrances in accordance with this Article 10, Applicable Laws, and Applicable Permits. The license granted on permissive use basis to the Concessionaire shall include the exclusive right to:

- design, construct, commission, operate and maintain during the O&M Period, the Project Facilities necessary for implementation of the Project at various Sites, in accordance with the SWM Rules, and other Applicable Laws;

- install, operate, use, maintain, and remove such equipment, devices or other structures and improvements on, over, or under the Sites, as may be necessary or appropriate for the operations and activities required or permitted under this Agreement;
- use Access Roads, gates, fences and utilities at or about the Sites;
- construct, use, operate, maintain, replace and repair electric lines, telecommunication lines, water supply networks and other utilities required to undertake the Project at the Sites.

10.2.2 On and from the Compliance Date and subject to the provisions of this Agreement, Authority shall grant the Concessionaire: (i) license over the Sites including the exclusive right to occupy and use the Sites to construct the Project Facilities; and (ii) all necessary Rights of Way to the Sites. Any charges payable for obtaining the Right of Way will be paid directly by Authority.

10.2.3 Authority shall provide the Site to the Concessionaire free of Encumbrances and free from encroachments as a Condition Precedent. If the Concessionaire discovers any hazardous substances at the time of handover of the Site by Authority, Authority will remove such hazardous substances at its own cost and expense. The Concessionaire's acceptance of the Sites at the time of Authority's handover/giving access to the Sites shall be deemed to be unconditional acceptance and that there were no hazardous substance or any possible form of obstruction to the project at the time of handover of Sites and Concessionaire shall be barred from raising any such issues, whatsoever, after the handover or having access to the Sites.

10.2.4 The Concessionaire shall not without the prior written consent or approval of Authority use the Sites for any purpose other than to undertake the Project and purposes incidental thereto, as permitted under this Agreement or as may be otherwise approved by Authority.

10.2.5 The full ownership and title over the Sites shall vest with Authority for the entire Concession Period.

10.2.6 The Authority warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, occupy the Sites, from such time that access is granted to the Concessionaire and until the expiry of the Concession Period or early termination of this Agreement. If the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Sites or any part thereof or in the event of any enforcement action including any attachment, distraint,

appointment of receiver or liquidator being initiated by any Person claiming to have a charge on the Site or any part thereof, Authority shall, if called upon by the Concessionaire, defend such claims and proceedings.

10.2.7 Subject to any substitution rights exercised by the Lenders, the license granted by Authority shall automatically terminate upon termination of this Agreement or expiry of the Concession Period.

10.2.8 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the rights granted hereunder at any time after the Concession Period has expired or has been Terminated in terms hereof, whichever is earlier, a sufficient proof of which shall be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.9 Termination of the Agreement shall automatically terminate the license granted over the Sites.

10.3. Site Data and Verification

10.3.1 Authority has made available to the Concessionaire, the layout plans, and all other relevant data, studies and reports in the Authority's possession in connection with the Sites.

10.3.2 The Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Sites.

10.3.3 The Concessionaire shall also be deemed to have inspected and examined the Site and its surroundings, analysed and verified the accuracy and reliability of the studies, reports and data provided by Authority and any other information available with respect to the Sites and to have satisfied itself as to all the relevant matters including:

- the nature of the Site, including the subsurface, hydrological, climatic and general physical conditions of the Site;
- the suitability of the Site for undertaking the construction and operation of the Project;
- the condition of the utilities available till the battery limits of the Sites;
- the extent, nature and availability of labour, material, transport, accommodation,

storage facilities and other facilities and resources necessary to undertake the Project;

- the nature of design, construction work and O&M services necessary for the performance of its obligations under this Agreement;
- Applicable Laws and Applicable Permits required to be obtained and maintained to undertake the Project;
- the risk of injury or damage to Adjoining Property and to the occupiers of such property or any other risk;
- the suitability and adequacy of any access roads to the Sites and other utilities and facilities; and
- all other matters that may affect the performance of its obligations under this Agreement.

Subject to Clause 10.3, the Concessionaire acknowledges and agrees that if any error or discrepancy is subsequently discovered in the data made available by the Authority, then the Authority and the Concessionaire may mutually arrive at a decision regarding any extension of the Scheduled COD and/or compensation for additional costs incurred caused due to such error or discrepancy. Provided that the Concessionaire shall not be entitled to any extension as mentioned above, nor shall it be open to the Concessionaire to justify any default or delay on the ground of the Concessionaire having not visited or acquainted itself with the Sites and Sites" conditions in any manner whatsoever. Further, any misinterpretation of the data, studies and reports provided by the Authority shall not relieve the Concessionaire from the performance of its obligations under this Agreement on the ground that it could not reasonably be expected to have foreseen any of the matters listed in Clause 10.3.3 above, which affect or may affect the Project or the performance of any of its obligations under this Agreement.

10.4. Unforeseen Site Conditions:

Authority is required to compensate the additional lead charges and other associated costs thereof to the Concessionaire, based on actuals upon occurrence of changes in project facility locations/sites/Transfer station locations from that of the areas /locations/sites specified herein this Agreement. For the purpose of estimation, an aggregate lead of 40 km has been considered as distance of the Project Site from the Transfer Stations.

10.5. Site Related Covenants

10.5.1 The Concessionaire agrees and undertakes that:

- the Concessionaire shall not transfer, alienate, assign, dispose of, sub-license or create any Security over any part of the Site or its rights and interest in the Site, other than as specifically permitted under this Agreement;
- the Concessionaire shall not allow any encroachment on, or unauthorized occupation of any part of the Site and in the event of any encroachment or unauthorized occupation, the Concessionaire shall immediately cause such encroachment or any unauthorized occupants to be removed from the Site. The Concessionaire shall not be entitled to any extension of time or costs incurred in removal of any encroachment or any unauthorized occupants from the Site;
- the grant of any rights to a Sub-Contractor or any other third party shall not interfere with or hinder the performance of the Concessionaire's obligations under this Agreement;
- the Concessionaire shall be wholly responsible for safety at and security of the Sites and the Project Facilities developed;
- the Concessionaire shall take all necessary measures to confine its operations, personnel and equipment to the Site and not encroach on any Adjoining Property;
- all minerals, fossils, articles of value or antiquity, structures and other remains or things of geological or archaeological interest and other objects with historic, antique or monetary value discovered at, on or under any of the Sites shall be dealt with in accordance with Applicable Laws and the Concessionaire shall take all necessary precautions to prevent its or its Sub-Contractor's personnel from removing or damaging any such article or thing. Further, immediately upon the discovery of any such article or thing of value, the Concessionaire shall inform the Authority of such discovery and carry out the instructions of the Authority in this regard;
- the Concessionaire shall make good any damage to any roads, footpaths, conduits, and other works on any Adjoining Property, which is caused by the Concessionaire or the Concessionaire Related Parties;
- the Concessionaire shall not to do or permit to be done anything which might:
    - cause destruction, scarring or defacing of natural surroundings in the vicinity of the Site;
    - be or become a danger or nuisance or give rise to liability in tort to any owners or occupiers of the Adjoining Property or to members of the public; or
    - cause any contamination or damage to any Adjoining Property, and the Concessionaire shall, at its own expense, take all reasonable measures and

precautions to avoid any such danger, nuisance, tort, damage, or interference and shall make good any damage so caused.

If the construction works and/or the O&M services cannot be carried out without interfering with the rights of the owner or occupier of any Adjoining Property, the Concessionaire shall promptly and at its own cost obtain all necessary third-party consents and/or the approval of the concerned Authority(ies) to undertake such construction works and/or the O&M services. The Authority shall provide all assistance to the Concessionaire for procuring such approvals.

- The Concessionaire shall not sub-license whole or any part of the Sites.
- The Concessionaire shall obtain and maintain the Applicable Permits in such sequence as is consistent with the requirements of the Project. The Concessionaire shall be responsible and shall be in compliance with the terms and conditions subject to which Applicable Permits have been issued.
- During the Concession Period, the Concessionaire shall protect the Sites from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Sites or the Project Facilities, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.
- The Concessionaire may landscape and develop the Sites and regulate the use thereof in accordance with the Good Industry Practice and in conformity with the provisions of this Agreement.

10.6. Access to Authority Related Parties

10.6.1 The Concessionaire shall ensure that the Authority Related Parties have access to the Sites and the license granted to the Concessionaire over the Site shall always be subject to:

- the rights of Authority, Authority's Representative to enter upon and access the Site to inspect and monitor the progress of the Project, and for the exercise of their rights and the performance of their obligations under this Agreement, provided that Authority shall ensure that the exercise of the inspection or monitoring rights do not impede or obstruct the construction and/or operation of the Project in any manner whatsoever; and
- the rights of the utility providers to enter upon and access the Sites for laying or installing telegraph lines, electric lines or for any other public purpose, if required

If any physical damage is caused to the Sites or the Project Facilities as a result of such access and use of the Sites by Authority, other Authority Related Parties then the Authority shall bear the costs of remedying such damage and restoring the Sites and the Project Facilities.

10.7. Sites to be free from Encumbrances

The Sites shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Sites for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For avoidance of doubt, it is agreed that existing Rights of Way, easements, privileges, liberties and appurtenances to the Sites shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Sites.

10.8. Land Use

The Concessionaire shall ensure optimum utilization of the Site and land available and shall not use the same for any purpose unconnected or which is not incidental to the Project or related activities, unless otherwise permitted under this agreement. For avoidance of doubt, any land given by Authority to the Concessionaire for this project shall not be used for development of residential or commercial facilities or premises for rent, lease, or similar purpose.

ARTICLE 11 : UTILITIES AND ASSOCIATED ROADS

11.1. Existing Utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake at the Authority's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2. Shifting of obstructing utilities:

The Authority shall undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction and operation or maintenance of the Project. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of any delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3. Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees in the project site if and only if such trees cause a material adverse effect on the construction of the plant and operation or maintenance of the Project. The cost of such felling shall be borne by the Authority, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

11.4. New utilities and roads

The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables, or such other utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

ARTICLE 12 : FINANCIAL CLOSURE AND SUBSTITUTION AGREEMENT

12.1. General Obligations

12.1.1 The Concessionaire expressly agrees and undertakes that it shall itself be responsible for arranging for financing and / or meeting all financing requirements for the Project at its cost and shall enter into Financing Agreements with the Lenders for the same. To this end, the Authority shall co-operate with the Concessionaire to achieve Financial Closure, including providing such consents and waivers as may be reasonably required by the Lenders.

12.1.2 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Closure within [180 (One Hundred Eighty)] days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding [90 (ninety)] days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay.

12.1.3 Damages specified herein shall be payable every week in advance and the period beyond the said [180 (One Hundred Eighty)] days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Closure has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Article 4 or due to Force Majeure.

12.1.4 In case of a Concessionaire Event of Default, the Authority acknowledge that the Lenders will have a right to substitute the Concessionaire in accordance with Article 26 and the Substitution Agreement. The Authority will suspend its right to step- in or terminate this Agreement until the expiry of the period available to the Lenders to exercise their substitution rights under Article 26.

12.1.5 The Concessionaire shall, upon occurrence of Financial Closure, notify the Independent Engineer/ the Authority forthwith, and shall have provided to the Independent Engineer / the Authority, at least 2 (two) days prior to Financial Closure, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in Microsoft Excel version or any substitute thereof, which

is acceptable to the Senior Lenders.

12.1.6 The Concessionaire shall maintain books of accounts recording all its receipts (including fees and other revenues derived/collected by it from or on account of any of the Project Facilities and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits.

12.1.7 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority , and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

12.2. Security Creation

12.2.1 The Concessionaire shall be entitled to create assignment by way of Security over all of its rights, title and interests in and to the Concession Agreement and the Escrow Agreement in favor of the Lenders for the purpose of obtaining Financial Assistance for the Project, provided that the creation of such Security will not result in any financial liability to the Authority .

12.2.2 The Concessionaire shall be entitled to include the Lenders as co-insured and/or additional loss payees in any of the insurances taken by the Concessionaire in accordance with Article 28 and/or grant Security over the proceeds of such insurance.

12.2.3 Except for any Security created by operation of law and any Security created pursuant to this Article 12.2, the Concessionaire shall not be entitled to create any other Security over the Concession Agreement, the Escrow Agreement or insurance policies taken by it in favour of any third Persons, without the prior written consent of the Authority, which consent the Authority may deny in its sole discretion.

12.2.4 The Concessionaire shall not be entitled to create any Security over the Site or any part thereof, or any of the Project Facilities whether in favor of the Lenders or any third Persons.

12.3. Termination due to failure to achieve Financial Closure

Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Closure does not occur, for any reason whatsoever, within the period set forth in this Article or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. In case of Termination due to such an event, the Authority shall have the right to forfeit the Performance Security or bid security. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Compliance Date to precede the Financial Closure, the provisions of this Article shall not apply.

12.4. Substitution Agreement

12.4.1 This Agreement shall not be assigned by the Concessionaire. Provided, however, subject to the provisions of this Agreement, Lenders may be given the right of substitution by execution of the Substitution Agreement in the form annexed hereto as Schedule 9.

12.4.2 The Lenders may exercise the rights of step in, or substitution as provided in the Substitution Agreement provided that the Nominated Company substituting the Concessionaire shall enjoy all rights and be responsible for performing/ fulfilling all obligations of the Concessionaire under this Agreement.

Provided that in the event the Lenders are unable to substitute the Concessionaire by the Nominated Company as per the provisions of the Substitution Agreement, the Authority shall proceed to terminate the Agreement.

ARTICLE 13 : INDEPENDENT ENGINEER

13.1. Independent Engineer

The Authority shall appoint a third-party engineering firm with requisite technical expertise, knowledge and experience in the [design, engineering, construction, development, and operation] of waste processing facilities, material recovery facilities, and other machinery and facilities forming part of the integrated solid waste management system as the engineer for the Project (the "**Independent Engineer**"). The Independent Engineer shall assist the Authority in supervising the development of all the amenities and facilities required as basic and support infrastructure for implementation of the Project including construction/renovation, operation and maintenance of facilities for Integrated Solid Waste management system such as infrastructure, collection and transportation vehicles, ICT infrastructure, machinery and equipment procured, inherited, installed and operated and all other Project related physical assets (the "**Project Facilities**") and shall support Authority to monitor compliance with the KPIs during the O&M period. The detailed scope of work of the Independent Engineer is set out in **Schedule 10**.

The Independent Engineer shall be a third-party agency, appointed within 3 (three) months of this Agreement. The Independent Engineer is not to be mistaken as the Project Engineer, who is the Authority's Authorized Signatory.

13.2. Remuneration

The Authority shall pay the Independent Engineer all fees, costs, charges, and expenses payable to the Independent Engineer in accordance with the terms of its appointment (collectively "the Remuneration"). However, the Authority and Concessionaire shall share this expense equally on a 50:50 basis. The Authority shall recover the pro-rated costs payable to the Independent Engineer as Remuneration from amounts payable to the Concessionaire.

13.3. Replacement of the Independent Engineer

13.3.1 The Concessionaire may request the Authority to replace the Independent Engineer if the Concessionaire believes that the Independent Engineer is not performing its duties in accordance with this Agreement or is otherwise impeding the performance of the Concessionaire's obligations under this Agreement.

13.3.2 The Authority may replace the Independent Engineer in any of the following circumstances:

- if it has reason to believe that the Independent Engineer has not discharged its duties in accordance with this Article and/or Schedule 10; or
- has received a formal complaint from the Concessionaire. In such a case the Authority will make necessary investigations and it is established that the Independent Engineer has not discharged its duties in accordance with this Article and/or Schedule 10; or
- if the Independent Engineer submits its resignation.

13.3.3 In appointing any replacement of the Independent Engineer, the Authority shall comply with this Article and Schedule 10.

13.4. Duties of Independent Engineer:

13.4.1 The Independent Engineer shall be required to act independently, reasonably, fairly, and expeditiously to ensure:

- the timely completion of construction of the Project Facilities on or before the Scheduled Construction Completion Date; and
- compliance with the KPIs during the O&M Period.

13.4.2 The Independent Engineer shall at all times during the Concession Period have the right to enter upon and access the Site. The Concessionaire shall have the right to accompany the Independent Engineer during its inspection of the Project Facilities.

13.4.3 During the Construction Period, the Independent Engineer shall inspect the Project Facilities at least once a month and prepare an inspection report, setting out the progress of the construction of the Project Facilities, defects or deficiencies, if any, and status of compliance with the Construction Plan, Specifications and Standards, and Designs and Drawings. The Independent Engineer shall send the report to the Authority and the Concessionaire within 7 (seven) days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any, identified by the Independent Engineer.

13.4.4 During the O&M Period, the Independent Engineer shall inspect the Project Facilities at least once a month and prepare an inspection report, setting out the defects or deficiencies, if any, and status of compliance with the KPIs. The Independent Engineer shall send the report to the Authority and the Concessionaire

within 7 (seven) days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any, identified by the Independent Engineer. The Independent Engineer shall also have the right to verify the results of the tests undertaken by the Concessionaire at any time during the O&M Period of the quality of the compost or any other by-products created during waste management processes which are intended to be sold in the market.

13.4.5 The Independent Engineer shall, at all times, have the right to attend any meetings held by the Concessionaire to review the progress of the construction or O&M of the Project Facilities, and to provide its comments/suggestions regarding the progress as well as the manner in which the construction works, or O&M services is being undertaken. Neither any comments/suggestions provided by the Independent Engineer nor any failure to provide comments/suggestions shall be deemed to be an acceptance of the construction works or the O&M services or a waiver of the Concessionaire's obligations to implement the Project, in accordance with this Agreement, the Technical Specifications, the Designs and Drawings, the ESHS Documents, and all Applicable Laws and Applicable Permits.

13.5. Except as specifically provided in this Agreement, the Independent Engineer shall have no authority, whether express or implied, to amend, vary or curtail any of the rights or obligations of the Parties.

13.6. The Concessionaire agrees that notwithstanding any review by the Independent Engineer of any or all the construction works or O&M services, the Concessionaire shall bear all risk, responsibility and liability for the quality, adequacy and suitability of the Project Facilities.

ARTICLE 14 : (Deleted)

ARTICLE 15 : CONSTRUCTION PERIOD

15.1. Commencement and Duration

15.1.1 The period for construction of the Project Facilities shall commence on and from the Compliance Date and shall continue until the Construction Completion Date (the "Construction Period").

Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall, prior to the Compliance Date, be entitled to commence:

- soil or geophysical investigation or testing at the Sites; and
- appointment of Sub-Concessionaires for the construction works for the Project Facilities, with the prior approval of the Authority.

15.1.2 [Deleted]

15.2. Designs and Drawings

15.2.1 Basic Engineering Designs

(a) The Concessionaire shall prepare the Basic Engineering Designs in accordance with the Technical Specifications, Applicable Laws, and Applicable Permits. The Basic Engineering Designs shall be drawn to scale, with accurate dimensions, to minimize construction delays, disputes, and cost overruns and to ensure smooth construction of the Project Facilities and submitted in accordance with Schedule 1 and 2. The Project Facilities should be designed in a manner such that the Concessionaire can obtain consent to operate from the [State Pollution Control Board] for the operation of the Project Facilities. The Basic Engineering Designs should also specify the Proposed Technology(ies) for the implementation of the Project. The technology proposed to establish must be approved technology by any one of statutory bodies or Government departments or CPCB/ or any State PCB. The design and drawing so prepared based on approved technology must get proof checked for the design and drawings by IISc/IITs/NITs/ or any other reputed institutions or Universities.

(b) Within 30 (thirty) days from the date of Execution of agreement or from the Date of handing over of the land for the facilities, whichever is later, the Concessionaire shall submit 4 (four) set of hard copies and 1 (one) set of soft copy on a compact disc/ USB of the draft Basic Engineering Designs to the Authority for its review and approval.

(c) Authority shall forward the Basic Engineering Designs to the Independent Engineer and the PMU for their review and comments.

(d) Authority shall provide comments if any, on the draft Basic Engineering Designs (including any comments from the Independent Engineer/PMU) to the Concessionaire or notify the Concessionaire of its approval of the draft Basic Engineering Designs within 20 (twenty) days from the date of receipt of the draft Basic Engineering Designs. Authority may require the Concessionaire to amend or modify the draft Basic Engineering Designs if Authority or the Independent Engineer identifies any deficiencies, inaccuracies, or shortcomings in the draft Basic Engineering Designs. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Basic Engineering Designs from Authority, then the Concessionaire shall modify the draft Basic Engineering Designs to correct any such shortcomings, inaccuracies or deficiencies and/or address, in writing, Authority's/ the Independent Engineer's comments on the draft Basic Engineering Designs and submit the revised Basic Engineering Designs to Authority for its approval within 10 (ten) days of receipt of comments. The process set out in this Clause 15.2.1 (a) shall continue until the Basic Engineering Designs are approved by Authority in accordance with this Clause 15.2.1 (d). For the avoidance of doubt, approval of Basic Engineering Designs by Authority/ the Independent Engineer shall not relieve the Concessionaire of its obligations to prepare the Basic Engineering Design in accordance with Technical Specifications, Applicable Laws, and Applicable Permits.

(e) Use of Proposed Technology

- The Concessionaire shall design and develop the Project based on the Proposed Technology, approved by the Authority as part of the Designs and Drawings. The technology proposed to establish must be approved technology by any one of statutory bodies or Government departments or CPCB/ or any State PCB. The design and drawing so prepared based on approved technology must get proof checked for the design and drawings by IISc/IIT's/NITs/ or any other reputed institutions or Universities.
- If the Selected Bidder is the owner of the Proposed Technology, then the Concessionaire shall enter into a technology license agreement with the Selected Bidder, under which the Selected Bidder will grant to the Concessionaire an irrevocable, perpetual, assignable, non-exclusive, and royalty-free license to use the Proposed Technology to develop and operate the Facilities. In any case the technology and design must be proof checked for its design and drawings by any reputed institution who are authorized to do so.
- If the Selected Bidder does not own the Proposed Technology, then the Concessionaire shall, at its own cost, enter into a technology license agreement with the technology provider, under which the technology provider will grant to the

Concessionaire an irrevocable, perpetual, assignable and royalty-free license to use the Proposed Technology. At no point will the Authority and Authority be obliged to make any payments to the Concessionaire regarding the licensing and use of the Proposed Technology.

- Upon the expiry or early termination of this Agreement, the Concessionaire shall assign the license and related rights to use the Proposed Technology for the sole purpose of Construction and Processing the Project at no additional cost to Authority.
- The Concessionaire shall indemnify the Authority for any claims, losses, damages, and costs suffered by the Authority as a result of an infringement of any third party's Intellectual Property Rights caused by the operation and use of the Project Facilities.

15.2.1. Screening Report

(a) The Concessionaire shall prepare the Screening Report in accordance with the relevant safeguard policies/performance standards/Applicable Laws, and the Environment and Social Management Framework (the "ESMF").

(b) Within 30 (thirty) days from the Execution Date, the Concessionaire shall submit 4 (four) hard copies and 1 (one) soft copy of the draft Screening Report on a compact disc to the Executing Agency for its review and approval.

(c) The Authority shall provide comments if any, on the draft Screening Report to the Concessionaire or notify the Concessionaire of its approval of the draft Screening Report within 20 (twenty) days from the date of receipt of the draft Screening Report. Authority may require the Concessionaire to amend or modify the draft Screening Report if Authority identifies any deficiencies, inaccuracies, or shortcomings in the draft Screening Report. If the Concessionaire receives any comments, suggestions, or instructions to modify the draft Screening Report from Authority, then the Concessionaire shall modify the draft Screening Report to correct any such shortcomings, inaccuracies or deficiencies and/or address, in writing, Authority's comments on the draft Screening Report and submit the revised Screening Report to Authority for its approval within 10 (ten) days of receipt of comments. The process set out in this Clause 15.2.2 (c) shall continue until the Screening Report is approved by Authority in accordance with this Clause 15.2.2 (c)

15.2.2. The process set out in Clause 15.2.2. above shall apply to the submission and approval of the Designs and Drawings for the work corresponding to each Construction/Payment Milestone for the Project Facilities.

15.2.3. The Concessionaire shall construct the Facilities strictly in accordance with the approved Designs and Drawings. If there are any errors or deficiencies in the Technical Specifications, the Designs and Drawings shall consider, address, or rectify such errors or deficiencies. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Designs and Drawings without the prior written approval of Authority. The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the Designs and Drawings in accordance with Clause 15.2. If the Concessionaire undertakes any construction work for the Project Facilities prior to the approval of the Designs and Drawings, it shall do so at its own risk and Authority shall have the right to reject any such construction work that does not comply with the approved Designs and Drawings.

15.2.4. Notwithstanding any approval of the Designs and Drawings by Authority, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the Designs and Drawings. Subject to satisfaction of Conditions Precedent set out in Article 4, the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Designs and Drawings and complying with the requirements of the Clause 15.2.

15.3. Construction Plan

15.3.1. Within 30 (thirty) days from the date of Execution of agreement or from the Date of handing over of the land for the facilities whichever is later the Concessionaire shall prepare and submit to Authority a detailed Construction Plan. The Construction Plan shall set out:

- The detailed plan for completing the construction (the "Construction Completion Schedule" as set out in Schedule 12) of the Project Facilities by the Scheduled Construction Completion Date; specific activities and extent of construction work to be performed by the Concessionaire to achieve each of the Project Facilities Milestones; and
- the order in which the Concessionaire proposes to execute the construction of the Project Facilities.

15.3.2. Authority shall review and provide comments, if any, on the draft

Construction Plan to the Concessionaire or notify the Concessionaire of its approval of the draft Construction Plan within 30 (thirty) days from the date of receipt of the draft

Construction Plan from the Concessionaire. Authority may require the Concessionaire to amend or modify the draft Construction Plan if Authority identifies any deficiencies or shortcomings in the draft Construction Plan. If the Concessionaire receives any comments, suggestions, or instructions to modify the draft Construction Plan from Authority, then the Concessionaire shall incorporate the suggestions made by Authority and modify the draft Construction Plan to address any such comments, shortcomings or deficiencies identified by Authority. Thereafter, the Concessionaire shall submit the revised Construction Plan to Authority for its approval. The process set out in this Clause 15.3.2 shall continue until the Construction Plan is approved by Authority in accordance with this Clause 15.3.2.

15.3.3. The Concessionaire shall develop and construct the Project Facilities strictly in accordance with the approved Construction Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Construction Plan without the prior written approval of Authority. The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the Construction Plan in accordance with this Clause 15.3.

15.3.4. Notwithstanding any approval of the Construction Plan by Authority, the Concessionaire shall be solely liable for completing the construction of the Project Facilities by the Scheduled Construction Completion Date.

15.3.5. The Concessionaire shall submit a consolidated Construction Plan for the Project Facilities.

15.3.6. Within a maximum of 30 (thirty) days from the Execution Date, the Concessionaire shall prepare and submit to Authority a Detailed Project plan for the Integrated Solid Waste Management.

15.3.7. Authority shall review and provide comments, if any, on the draft Plan to the Concessionaire or notify the Concessionaire of its approval of the draft Plan within 20 (twenty) days from the date of receipt of the draft Plan from the Concessionaire. Authority may require the Concessionaire to amend or modify the draft Plan if Authority identifies any deficiencies or shortcomings in the draft Reclamation Plan. If the Concessionaire receives any comments, suggestions, or instructions to modify the draft Plan from

Authority, then the Concessionaire shall incorporate the suggestions made by Authority and modify the draft Plan to address any such

comments, shortcomings or deficiencies identified by Authority. Thereafter, the Concessionaire shall submit the revised Plan to Authority for its approval. The process set out in this Clause 15.3.6. shall continue until the Plan is approved by Authority in accordance with this Clause 15.3.6.

15.3.8. The Concessionaire shall execute the Project strictly in accordance with the approved Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Plan without the prior written approval of the Authority. The Concessionaire shall not commence execution works of Reusable bi products prior to approval of the Plan in accordance with this Clause 15.3.7.

15.3.9. Notwithstanding any approval of the Plan by the Authority, the Concessionaire shall be solely liable for the construction of the Project facilities by the Scheduled Completion Date and the O&M thereafter.

15.4. ESHS Documents

15.4.1. Within 45 (forty five) days from the date of Execution of agreement or from the Date of handing over of the land for the facilities whichever is later, the Concessionaire shall prepare and submit 4 (four) hard copies and 1 (one) soft copy on a compact disc of the ESHS Documents to the Authority as per format prescribed in **Schedule 13.**

15.4.2. The ESHS Documents shall set out the Project Facilities specific health, safety and environment policies, guidelines and procedures to be followed by the Concessionaire in undertaking the Project, developed in accordance with the applicable safeguard policies/performance standards/Applicable Laws, the ESMF, this Agreement, Applicable Permits, and Good Industry Practices.

15.4.3. The ESHS Documents shall comprise the following:

- Safeguard Documents:

As part of the Safeguard Documents, the Concessionaire shall be required to:

- submit the environment and social impact assessment report (the "ESIA"); and
- prepare the environmental management plan (the "EMP"), OR
- in case of unavailability of such existing documents, create ESIA and prepare the EMP.

- Safety Documents

As part of the Safety Documents, the Concessionaire shall be required to prepare the following:

- environment, social, health and safety management plan (the "ESHSMP");
- environmental, social, health and safety management strategies and implementation plan (the "ESHS-MSIP") (shall be prepared on the basis of the template of requirements as set out in Schedule 13). The ESHS-MSIP shall include the following, for the purposes of managing the key ESHS risks in relation to the Project:
    - traffic management plan to ensure safety of local communities from construction traffic;
    - water resource protection plan to prevent contamination of drinking water;
    - boundary marking and protection strategy for mobilization and construction to prevent offsite adverse impacts; and
    - Strategy for obtaining Concessionaire Applicable Permits prior to the start of relevant works.
- Code of Conduct

  The Code of Conduct shall be prepared on the basis of the requirements set out in Schedule 13. The Code of Conduct shall apply to the Concessionaire's employees and subcontractors and shall set out the ESHS obligations of the Concessionaire under the Agreement relating to risks associated with labor influx, spread of communicable diseases, sexual harassment, gender-based violence, illicit behavior, and crime, and maintaining a safe environment etc. The Code of Conduct shall also set out the manner in which the Code of Conduct will be implemented, including how it will be introduced into conditions of employment/engagement, what training will be provided, how it will be monitored and how the Concessionaire proposes to deal with any breaches.

- In the ESHS, the Concessionaire shall also be required to provide details of the core team of 3 (three) people for implementation of the Concessionaire's ESHS obligations, comprising: (i) health expert and safety specialist; (ii) an environmental specialist; and (iii) social specialist, who meet the minimum qualification requirements in Schedule 13.
- Within 30 (thirty) days from the Execution Date, the Concessionaire shall prepare and submit 4 (four) hard copies and 1 (one) soft copy of Labour Influx and Workers Camp

Management Plan to Authority that addresses specific activities that will be undertaken to minimize the impact on the local community, including elements such as worker codes of conduct, training programs on HIV/AIDS, etc. A Workers' Camp Management Plan addresses specific aspects of the establishment and operation of workers‟ camps.

- This Labor Influx and Workers‟ Camp Management Plan will include:
  - Mandatory and repeated training and awareness raising for the workforce about refraining from unacceptable conduct toward local community members, specifically women;
  - informing workers about national laws that make sexual harassment and gender-based violence a punishable offence which is prosecuted;
  - introducing a Worker Code of Conduct as part of the employment contract, and including sanctions for non-compliance (e.g., termination), manual scavenging, engagement with local residents, child labor, nondiscrimination, harassment of coworkers including women and those belonging to Scheduled Castes and Schedules Tribes and other minority social groups,
  - Concessionaires adopting a policy to cooperate with law enforcement agencies in investigating complaints about gender-based violence.
  - training programs on HIV/AIDS and other communicable diseases,
  - workers' Camp Management Plan addressing specific aspects of the establishment and operation of workers' camps.; and
  - complaint handling mechanism at the Project level.

15.4.4. The Authority shall forward a copy of the draft ESHS Documents to the Independent Engineer and the Authority for its review and comments.

15.4.5. The Authority shall provide comments, if any, on the draft ESHS Documents (including any comments from the Independent Engineer) to the Concessionaire or notify the Concessionaire of its approval of the draft ESHS Documents within 30 (thirty) days from the date of receipt of the draft ESHS Documents from the Concessionaire. Authority may require the Concessionaire to amend or modify the draft ESHS Documents if Authority or the Independent Engineer or the Authority identifies any deficiencies or shortcomings in the draft ESHS Documents. If the Concessionaire receives any comments, suggestions, or instructions to modify ESHS, the draft ESHS Documents from Authority, then the

Concessionaire shall modify the draft ESHS Documents to address any such comments, shortcomings or

deficiencies identified by Authority. Thereafter, the Concessionaire shall submit the revised ESHS Documents to Authority for its approval. The process set out in this Clause 15.4.5. shall continue until the ESHS Documents are approved by Authority in accordance with this Clause 15.4.5.

15.4.6. The Concessionaire shall ensure that its Sub-Concessionaires/subcontractors comply with and conform to all aspects of the ESHS Documents, approved in accordance with this Clause 15.4, in executing the Project. Any failure of the Concessionaire or the Sub-Concessionaires to comply with the ESHS Documents shall constitute a Concessionaire Event of Default. The Concessionaire shall indemnify The Authority against all costs, expenses, penalties, and liabilities incurred/suffered by Authority the Authority due to the Concessionaire's or any Sub-Concessionaire's failure to comply with the ESHS Documents in the course of execution of the Project. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved ESHS Documents without the prior written approval of Authority.

15.4.7. Neither any approval of the ESHS Documents by Authority, nor any failure to review and provide comments on the ESHS Documents shall excuse any failure by the Concessionaire to adopt proper and recognized safety and environment friendly practices during the execution of the Project. The Concessionaire shall bear all risk, responsibility and liability for the accuracy and adequacy of the final ESHS Documents in ensuring compliance with the applicable safeguard policies/performance standards/Applicable Laws, the ESMF, this Agreement, Applicable Permits and Good Industry Practices in the execution of the Project. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in preparation of the ESHS Documents and complying with the requirements of Clause 15.4.

15.5. Sub-contracting

15.5.1. The Concessionaire may enter into Sub-Contracts to perform any part of its Scope of Work during the Construction Period, with the prior intimation to Authority.

15.5.2. The Concessionaire shall provide a copy of each proposed Sub-Contract,

along with details of the relevant Sub-Contractor, for the record to Authority, which should set out the precise Scope of Work to be Sub-contracted to such Sub-Contractor and should be consistent with the terms of this Agreement.

15.5.3. The Concessionaire shall be responsible for the supervision and monitoring of the performance of any work or services by the Sub-Contractor.

15.5.4. If the Concessionaire proposes to novate or replace a Sub-Contract after submission of details as required under Article 26. above, then such novation or replacement shall also be intimated to Authority.

15.5.5. The Concessionaire shall be and remain liable under this Agreement for all work and services subcontracted under this Agreement and for all acts, omissions, or defaults of any Sub-Contractor. No default under any Sub-Contract shall excuse the Concessionaire from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach, or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach, or negligence of the Sub-Contractors.

15.5.6. The Independent Engineer and Authority have the right to access information and audit the Sub-Contractor files with regards to the Concession Agreement.

15.6. Concessionaire's Construction Obligations

15.6.1. The Concessionaire shall design, finance, construct and complete the Project Facilities and achieve the COD in accordance with Applicable Laws, Applicable Permits, Good Industry Practice, the Technical Specifications, the ESHS Documents, the Designs and Drawings, the Construction Plan and other provisions of this Agreement.

For this purpose, during the Construction Period, the Concessionaire shall:

- complete the work corresponding to each Milestone by the Scheduled Milestone Completion Date and complete the development and construction of the relevant Project Facilities by the relevant Scheduled Construction Completion Date, in a manner that:
    - is in compliance with the Technical Specifications, the Designs and Drawings, the Construction Plan, the ESHS Documents, Applicable Laws, Applicable Permits and Good Industry Practices. For the avoidance of doubt, if there arises any ambiguity or conflict between the Technical Specifications and any Applicable Laws, then the one setting out the more stringent requirements or specifications shall prevail;

- the Project Facilities are fabricated, erected, installed and completed in accordance

with the final Designs and Drawings;

- the Project Facilities are free from all defects in design, materials, and workmanship;
- the Project Facilities are safe, reliable and fit for purpose;
- the Project Facilities shall be capable of operating up to their respective design capacity; and
- maintain and comply with the conditions of all Applicable Permits in undertaking the construction of the Project Facilities;
- within 30 (thirty) days of the Compliance Date, and in any event, prior to the commencement of any construction of the Project Facilities, appoint a Person with sufficient skill and expertise to act as the Concessionaire's Representative. The Concessionaire's Representative shall monitor, coordinate, and supervise the completion of the Project Facilities, and liaise with Authority's Representative and the Authority Representative and the Independent Engineer during the Construction Period and the O&M Period. At any time during the Concession Period, the Concessionaire may replace the Concessionaire's Representative with prior written notice to The Authority ;
- provide all necessary assistance to the Independent Engineer, the Authority, and Authority in undertaking inspection of the Project Facilities, and in performing its other obligations and duties under this Agreement;
- [deleted]
- ensure that none of its employees, consultants, service providers, suppliers, or Sub-Contractors, who may be engaged in future, shall be engaged in corrupt, fraudulent, collusive, coercive or obstructive practice;
- reasonably consider and act upon the comments/suggestions made by the Independent Engineer and Authority during any meetings with the Concessionaire;
- rectify any defects and/or deficiencies in the Project Facilities, including any defects and/or deficiencies identified by the Independent Engineer or Authority;
- take all necessary measures to maintain the safety and security of personnel, material and property at the Site(s) and the Adjoining Properties, in accordance with the approved ESHS Documents and all Applicable Laws;
- ensure that all excavated materials, earthworks, waste materials and hazardous substances are stored and/or disposed in accordance with the ESHS documents, Applicable Laws and Applicable Permits:
- submit monthly reports to the Independent Engineer (with a copy to Authority), no

later than 10 (ten) days after the end of each month, which should set out the following:

- extent of progress of construction activities performed by the Concessionaire for the Project Facilities;
- comparison of actual progress against the planned progress of construction works, reasons for delay, if any and steps taken by the Concessionaire to mitigate the delay;
- details of any accident or hazardous incident at the Site(s) and the steps taken by the Concessionaire to mitigate the consequences of such accident;
- status of rectification of defects and/or deficiencies discovered by the Independent Engineer or Authority;

- ensure that an adequate number of suitably skilled and experienced contractors, architects, workmen and other personnel are engaged to undertake the Project. The Concessionaire shall be solely responsible for the work performed by any staff and labour engaged by it to execute the Project and for payment of all applicable labour charges, fees, payable under Applicable Laws (including labour welfare legislations) in connection with the skilled and unskilled manpower employed for the Project, including specifically the "Building and Other Construction Workers Welfare Cess Act, 1996". The Concessionaire shall ensure that its Sub-Contractors provide all necessary amenities and welfare facilities for the staff and labour engaged by them at the Site(s) and comply with all applicable labour laws. The Concessionaire shall indemnify and hold harmless The Authority from and against all claims, liabilities, expenses, costs and losses suffered or incurred by Authority or the Authority due to the Concessionaire's or any Sub- Concessionaire's failure to comply with any Applicable Laws (including labour welfare legislations);
- arrange for all equipment, machinery, tools and other resources required to undertake the Project and be solely responsible for such equipment, machinery, tools and resources;
- take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Sub-Contractors' personnel or equipment, to or from the Site(s), does not interfere with local traffic in the vicinity of the Site(s);
- maintain accurate and systematic accounts and records of goods and material utilized and other costs and expenses incurred in connection with the construction works for the Project Facilities, including all invoices, receipts, challans, vouchers, quotations and other records and documents with respect to the Project Facilities in accordance with Applicable Laws;

- obtain and maintain adequate insurances as per this Agreement; and
- prepare and keep up-to-date, "as-built" records of the execution of the construction work for the Project Facilities, showing the exact as-built locations, sizes and details of the works executed. The "as-built" records shall be kept on the Site(s) and be made available to the Independent Engineer and Authority for review and verification. The Concessionaire shall provide 4 (four) hard copies and 1 (one) soft copy on a compact disc, of the complete set of "as-built" drawings for the Project Facilities to Authority as a condition precedent to the issuance of the Construction Completion Certificate.

15.7. Waste to Energy Plant(s)

[deleted]

15.8. Rights and Obligations of Authority

15.8.1. During the Construction Period, Authority shall:

- comply with all its obligations under Applicable Laws (including, specifically the [Act applicable in Karnataka] Act) and Applicable Permits;
- make reasonable endeavors to assist the Concessionaire in obtaining the Applicable Permits from the relevant Authorities, provided that the Concessionaire has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits;
- within 30 (thirty) days of the Compliance Date, and in any event, prior to the commencement of any construction for the Project Facilities, appoint a Person with sufficient skill and expertise to act as Authority's Representative. Authority's Representative shall liaise with the Concessionaire's Representative, and the Independent Engineer during the Construction Period and the O&M Period. At any time during the Concession Period, Authority may replace Authority's Representative with prior written notice to the Concessionaire and the Authority;
- cause the Independent Engineer to carry out timely inspection of the Project Facilities, and perform its other obligations and duties under this Agreement;
- upon progressive completion of construction works for the Project Facilities in accordance with the Technical Specifications, Designs and Drawings, Construction Plan and other provisions of this Agreement, as certified by the Independent Engineer, issue the Milestone Completion Certificates and the Construction Completion Certificate to the Concessionaire;

- ensure that the Concessionaire enjoys peaceful access to the Site(s) and shall not assign, transfer, or otherwise dispose its rights, title, and interest in the Site(s) or create any Encumbrance over any part of the Site(s), which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement; and
- ensure that the Escrow Account is funded with the Minimum Escrow Balance.

15.9. Utilities

15.9.1. The Concessionaire shall obtain, install and maintain at its cost, all utilities necessary for undertaking the construction of the Project Facilities, including all temporary power and water connections, lighting facilities, telephone connections, internet connections, etc., at the Site(s). The Authority shall only provide support for utilities like access roads, drainage, power, water as per Clause 4.1.2. (h). The Concessionaire shall bear the cost of all power, water, and other utilities consumed by it during the Construction Period, and the Concessionaire shall not be entitled to claim any reimbursement from Authority in this regard.

15.9.2. The Concessionaire shall not be entitled to any extension of time or costs to comply with its obligations in Clause 15.9.1 and Clause 15.9.2 above.

15.9.3. The Authority shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the construction of the Project Facilities.

15.10. Construction Timelines

15.10.1. The Concessionaire shall comply with the Construction Plan, the Designs and Drawings and the Technical Specifications and complete the construction of the Project Facilities on or before the date scheduled for completion of construction works (the "Scheduled Construction Completion Date" as per Schedule 12).

15.10.2. Subject to Clause 15.10.3 below, the Concessionaire shall be entitled to a day-for- day extension of the relevant Scheduled Milestone Completion Date or as the case may be, the Scheduled Construction Completion Date, if the completion of construction of the Project Facilities is delayed due to any of the following reasons (each such event, a "Delay Event"):

- occurrence of a Force Majeure Event, provided that the requirements of Article 14 have been complied with;
- a Qualifying Change in Law;
- any delay attributable to unforeseen Site conditions; or
- any variation proposed by the Authority in the Technical Specifications or the Designs and Drawings.
- delay caused in complying with any instructions of the Authority or the Independent Engineer, which instructions are not attributable to any default of the Concessionaire.

The Concessionaire shall promptly provide the Authority (with a copy to the Independent Engineer) with a notice upon becoming aware of any Delay Event listed at Article 15.10.2 above. The notice should specify the nature of the Delay Event, the extent of delay suffered or likely to be suffered by the Concessionaire and mitigation measures being taken by the Concessionaire.

The issuance of the notice under this Article 15.10.2, within 7 (seven) days from the date the Concessionaire became aware of the Delay Event, shall be a condition precedent to the Concessionaire's entitlement to an extension under Article 15.10.2.

For the avoidance of doubt, a Delay Event shall allow the Concessionaire only the extension of time and no additional costs.

15.10.3. Without prejudice to the Concessionaire's obligations to notify the Authority regarding the occurrence of a Delay Event above, the Concessionaire shall: (i) keep and maintain records as reasonably necessary to substantiate and establish claims for extensions under Article 15.10.2; and (ii) give the Authority and the Independent Engineer access to such records and documents or provide the Authority and the Independent Engineer with copies, if so requested.

15.10.4. If the Concessionaire claims an extension of time in accordance with Article 15.10.2 and the Authority is of the opinion that such delay was caused or materially contributed to by any concurrent or interacting cause or causes of delay not listed in Article 15.10.2 but solely attributable to the Concessionaire, then the Concessionaire shall not be entitled to any extension of time for the concurrent period of delay.

15.10.5. If two or more of the Delay Events listed in Clause 15.10.2 occur concurrently, then such concurrent period shall not be counted twice in

determining an extension under Clause 15.10.2.

15.10.6. Except as provided in Clause 15.10.2, the Concessionaire shall not be entitled to any extension of time for any reason whatsoever, including due to:

- delay caused in complying with any instructions of the Authority or the Project

Engineer which are attributable to any act or omission of the Concessionaire;

- failure of any Sub-Contractor to commence or carry out any work within the prescribed timelines;
- unavailability or shortage of equipment, materials, or any other resources
- any delay in approving the drafts of the Designs and Drawings, the Construction Plan, the ESHS Documents or any other document submitted by the Concessionaire due to any deficiencies or shortcomings in such drafts of the Designs and Drawings, the Construction Plan, the ESHS Documents or other documents, as the case may be; or

15.10.7. Any Dispute between the Parties with respect to the occurrence, length of subsistence or consequence of any of the Delay Event shall be settled in a final and binding manner in accordance with Article 27.

15.11. Delay Liquidated Damages:

15.11.1. Subject to Clause 15.10.2, if the Concessionaire fails to complete the work corresponding to any Milestone by the relevant Scheduled Milestone Completion Date (as per Clause 15.12) or fails to complete the construction of the Project Facilities by the Scheduled Construction Completion Date, then the Authority shall be entitled to liquidated damages for each day of delay beyond the Scheduled Milestone Completion Date, or, as the case may be, the Scheduled Construction Completion Date, at the rate of [[0.1% (zero point one per cent)] of the Performance Security (in case of a delay in achieving a Project Facilities Milestone or completing the Project Facilities by the Scheduled Construction Completion Date)]for each day of delay up to [6 (six)] months from the Scheduled Milestone Completion Date, or the Scheduled Construction Completion Date as the case may be (the "Delay Liquidated Damages"). The Delay Liquidated Damages will be payable until the work for the relevant Milestone is completed or, as the case may be, the construction of the Project Facilities is completed, as certified by the Authority in accordance with Article 15.11. If the Concessionaire completes the construction of the Project Facilities by the Scheduled Construction Completion Date, the aggregate Delay Liquidated Damages recovered by the Authority under this Article 15.11 for a delay in achieving any Milestone shall be refunded by the Authority to the

Concessionaire, without any interest.

15.11.2. The Authority shall be entitled to deduct the Delay Liquidated Damages from the tipping fee amount payable to the Concessionaire for any month, and if such amounts are not available, the Authority shall have a right to invoke the Performance Security(ies) to the extent of the Delay Liquidated Damages.

15.11.3. The Parties acknowledge that the Delay Liquidated Damages are a genuine pre- estimation of and reasonable compensation for the loss that shall be suffered by the Authority as a result of the delay in the completion of the Project Facilities, and not as penalty.

15.11.4. If, for any reason, the above paragraphs relating to the payment of Delay Liquidated Damages are void, invalid or otherwise inoperative so as to disentitle the Authority from claiming any Delay Liquidated Damages, then the Authority will be entitled to claim against the Concessionaire for general damages for delay in completing the works for the relevant Milestone by the Scheduled Milestone Completion Date, or for the delay in completing the construction of the Project Facilities by the Scheduled Construction Completion Date.

15.11.5. If the Concessionaire fails to complete the works for a Milestone within 6 (six) months of the Scheduled Milestone Completion Date or if the Concessionaire fails to complete the construction of the Project Facilities within 6 (six) months from the Scheduled Construction Completion Date, other than on account of any Delay Event (the "Grace Period"), then such failure shall be deemed to be a Concessionaire Event of Default in accordance with Clause .

15.11.6. The deduction of Delay Liquidated Damages shall not relieve the Concessionaire from its obligations to complete the construction of the Project Facilities, or from any of its other duties, obligations or responsibilities under the Agreement. The Concessionaire shall use and continue to use its best endeavors to avoid or reduce further delay in completing the Project Facilities.

15.11.7. Bonus on early completion: NOT APPLICABLE

15.12. Completion of Works

15.1.1 Completion of Milestones:

(a) Upon completion of the works corresponding to each Milestone, as specified in the Construction Plan, the Concessionaire shall issue a notice to Authority, with a copy to the Independent Engineer and the Authority to inspect (or cause the Independent Engineer to inspect) the completed works covered by the relevant Milestone. The purpose of such inspection shall be to determine whether the works corresponding to the relevant Milestone have been completed in accordance with the requirements of Article 15.6.

(b) If Authority is satisfied that the works for the relevant Milestone have been completed in accordance with the requirements of Article 15.6, then, subject to Article 15.12.1(e) below, Authority shall issue a Milestone Completion Certificate to the Concessionaire for such completed Milestone, within 7(seven) Business Days from the date of inspection of the works covered by such Milestone.

(c) If Authority is of the view that the works for the relevant Milestone do not satisfy the requirements of Article 15.6, then Authority shall have the right to provide any comments, suggestions and/or instruct the Concessionaire to carry out necessary modifications, to ensure that the works comply with the requirements of Article 15.6.

Upon receipt of such comments, suggestions or instructions from Authority, the Concessionaire shall make necessary modifications to the works to remedy any defects or deficiencies and re-issue a notice to Authority. The Concessionaire shall bear all costs of remedying the defects and deficiencies in the works and shall not be entitled to any extension of time for remedying such defects or deficiencies. This process shall be repeated until Authority is satisfied that the works for the relevant Milestone have been completed in accordance with the requirements of Article 15.6 and issues a Milestone Completion Certificate in accordance with this Article 15.12.1.

(d) If Authority fails to:

- inspect the completed portion of the works covered by the relevant Milestone, within 7 (seven) Business Days from the date of receipt of a notice from the Concessionaire under Clause 15.12.1(a) above;
- provide any comments or suggestions or notify the Concessionaire of any defects or deficiencies in the completed portion of the works covered by the relevant Milestone, within 7 (seven) Business Days from the date of inspection of such completed portion of the works; or

- issue the Milestone Completion Certificate, within 7 (seven) Business Days from the date of inspection of the completed portion of the works covered by the relevant Milestone, then, such delay shall be treated as a Delay Event, which will entitle the Concessionaire to a day for day extension in the Scheduled Milestone Completion Date or the Scheduled Construction Completion Date, as the case may be, beyond the 7 (seven) Business Days period.

(e) Authority may exercise its rights to review and certify the completion of works for any Milestone either itself or through the Independent Engineer. If Authority instructs the Independent Engineer to undertake a review of the works, then the Concessionaire shall cooperate with the Independent Engineer to facilitate such review and rectify any defects or deficiencies identified by the Independent Engineer in the works. Provided that, in all instances, Authority shall finally approve the works and issue the Milestone Completion Certificates.

PROJECT PHASE	MILESTONE/ KEY ACTIVITIES TO BE UNDERTAKEN BY CONCESSIONAIRE	TIME PERIOD (DAYS)
Completion Milestone 1: Planning Phase	• Undertake technical investigations and / or studies as required. • Signing of Land Agreement with the Authority. • Preparation and submission of DPR. • Seek Authorities approval for the submitted DPR.	120 days or Four Months from the Signing Date of agreement
Completion Milestone 2: Planning Phase	• Obtain all necessary clearances as defined in Schedule 30. • Financial Closure with Lenders. • Obtain Notice to Proceed from the Authority for construction of SWM Facility.	240 days or Eight Months From Execution Date

Completion Milestone 3: Interim Phase	Undertake all the necessary steps, including construction activities required for • Processing Facility, ancillary structures, amenities • Landfills. • Secondary Transport Infrastructure.	15 Months from Execution Date
Completion Milestone 4: Construction Phase	• Development & construction of SWM Facility. • Environment management and monitoring.	18 Months for Compost/RDF/ Bio-methanation --- 24 Months for Waste to Energy Plant From Execution Date
Beyond COD, the Project Milestones shall be as follows:		
Milestone 5: Operations & Maintenance Phase	• Secondary Collection & Transportation, Processing, and disposal of MSW in a scientific manner	30 Years (Post COD)
Milestone 6: Post-closure activities	• Management and closure of the landfill site as per CPCB and State PCB norms	15 Years post O&M Phase

15.12.1. Testing and Commissioning of the Project Facilities

- Upon completion of construction of each Project Facilities, in accordance with the requirements set out in this Agreement, the Concessionaire shall issue a notice to the Authority, requiring it to be present at the Site(s) on the date specified in such notice to undertake a final inspection of the completed Project Facilities and conduct any tests required to ensure that the Project Facilities complies with the Technical Specifications, the Designs and Drawings, Applicable Laws and Applicable Permits.
- Within 5 (five) days from the date of receipt of a notice under Article 15.12.2 above, the Authority may request the Concessionaire to vary the date of the final inspection and tests and the Concessionaire shall accommodate such request, provided that, such date shall be no later than 7 (seven) days from the date specified in the notice received from the Concessionaire under Article 15.12.2.
- The Concessionaire shall, on the date specified in the notice issued under Article

15.12.2 or on such other date as may be agreed with the Authority, carry out the tests in accordance with the instructions and under the supervision of the Authority and in accordance with clause 17.1.3 to demonstrate that the Project Facilities complies with the requirements of Article 19.

- If the Authority is not satisfied with the results of the tests or inspection, then the Concessionaire shall remedy any defects or deficiencies in the Project Facilities, identified by the Authority or revealed through the tests and the Project Facilities shall be tested again upon rectification of such defects or deficiencies. This process shall be

repeated until such a time that the Authority is satisfied that the Project Facilities has been completed in accordance with Article 14 and is safe and fit for purpose. The Concessionaire shall bear all costs of remedying the defects and deficiencies and retesting the Project Facilities and shall not be entitled to any extension of time for remedying such defects or deficiencies or for retesting the Project Facilities.

- If the Authority is satisfied with the results of the tests and inspection of the Project Facilities, the Authority shall issue the Milestone Completion Certificate in respect of the last Milestone to the Concessionaire, within 7 (seven) days from the date of inspection and testing of the completed Project Facilities. The issue of the Milestone Completion Certificate for the last Milestone shall certify that the Project Facilities has been completed in accordance with this Agreement, the Technical Specifications, the Designs and Drawings, Applicable Laws and Applicable Permits and the Project Facilities is safe and fit for purpose.
- If the Authority fails to:
    - inspect or witness the testing of the Project Facilities within 14 (fourteen) Business Days from the date of receipt of notice from the Concessionaire issued under Article 15.12.2 or such other date as may be agreed with the Concessionaire
    - notify the Concessionaire of any defects or deficiencies in the Project Facilities within 7 (seven) Business Days from the date of inspection and testing of the Project Facilities; or
    - issue the Milestone Completion Certificate for the last Milestone within

7 (seven) Business Days from the date of inspection and testing of the Project Facilities,

Then, such a delay shall be treated as a Delay Event, which will entitle the Concessionaire to a day-for-day extension in the Scheduled Milestone Completion Date and the Scheduled Construction Completion Date.

15.12.2. Issue of Completion Certificate for Reclamation of Land through Bio-Remediation of Legacy Waste at the Site(s): [Deleted]

15.12.3. Issue of Construction Completion Certificate of Project Facilities

- Within [7 (seven)] Business Days from the date of issuance of the Milestone Completion Certificate for the last Milestone, the Authority shall issue the Construction Completion Certificate for the Project Facilities to the Concessionaire, subject to the

following conditions having been fulfilled by the Concessionaire:

- the submission of 4 (four) hard copies and 1 (one) soft copy on a compact disc of complete sets of the „as-built" drawings of the Project Facilities;
- the Concessionaire having obtained all Applicable Permits necessary for commencement of the O&M services (including specifically the consent to operate from the [State Pollution Control Board] for the operation of the Project Facilities);
- the Concessionaire having obtained adequate insurance for the O&M period in accordance with Clause 11.2;
- the Concessionaire having engaged sufficient number of adequately skilled O&M personnel to perform the services during O&M; and
- the O&M Manual having been approved by the Authority; and
- the Concessionaire having cleared the Site(s) and removed all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site(s).
- If the Authority fails to issue the Construction Completion Certificate for the Project Facilities to the Concessionaire within [7 (seven)] Business Days from the date of satisfaction of the conditions set out in Clause 15.12.4 above and fails to notify the Concessionaire of any reasons for the failure to issue the Construction Completion Certificate for the Project Facilities, then, the Construction Completion Certificate for the Project Facilities shall be deemed to have been issued to the Concessionaire upon the expiry of the [7 (seven)] Business Days period.
- The date of the issuance or deemed issuance of the Construction Completion Certificate shall be the Construction Completion Date for the Project Facilities.

15.13. Trial Operations

15.13.1. Subject to Clause 15.13.3 below, within [1 (one)] day of the issuance or deemed issuance of the Construction Completion Certificate for the Project Facilities to the Concessionaire, the Concessionaire shall commence the Trial Operations of the Project Facilities in accordance with the trial operation procedures to determine whether the Project Facilities meets the KPIs on a continuous basis and is fit and ready to be placed into commercial operations in accordance with this Agreement.

15.13.2. Concessionaire shall ensure that adequate quantity of waste is delivered to the Project Facilities during the Trial Operations to enable the

Concessionaire to demonstrate that the Project Facilities meets the Technical Specifications and the KPIs.

15.13.3. If the Concessionaire fails to commence or continue the Trial Operations, due to the inadequate quantity or inferior quality of the MSW or processed products, then the Concessionaire shall promptly notify the Authority . If in the opinion of the Authority , the quantity or quality of Solid Waste is not adequate to undertake Trial Operations, then the Authority shall extend the time period for the Trial Operations. In such case, the date scheduled for commencement of operations (the "Scheduled COD") will also be extended on a day-for-day basis, provided that the Scheduled COD shall not be extended beyond the date which is [6 (six)] months from the Construction Completion Date.

15.13.4. During the Trial Operations, the Authority shall or shall cause the Independent Engineer to monitor the performance of the Project Facilities on a regular basis to ensure that the Project Facilities meets the Technical Specifications.

15.13.5. If the Authority, or, as the case may be, the Independent Engineer is of the view that: (i) the Trial Operations are not being conducted in accordance with the Trial Operations Procedure; or (ii) there are any defects or deficiencies in the Project Facilities, the Authority shall instruct the Concessionaire to follow the trial operation procedures and/or rectify the defects and deficiencies to ensure compliance with the KPIs. It is clarified that no Damages are payable by the Concessionaire during the Trial Operations period for a failure to achieve the KPIs. However, for the Trial Operations to be successfully concluded, the Concessionaire must demonstrate that the Project Facilities consistently and continuously meets the KPIs during a period of [20 (twenty)] days of Trial Operations period, as may be extended in accordance with Clause 15.13.3 above. If the Project Facilities fails to achieve the KPIs on a continuous basis during [20 (twenty)] days of the [3 (three)] months Trial Operations period (as extended in accordance with Clause 15.13.3. then the Trial Operations period shall be extended by another 20 days. Subject to Clause 15.13.4, the Trial Operations shall continue until the Concessionaire can demonstrate that the Project Facilities consistently achieves the KPIs for 20 (twenty) consecutive days.

15.13.6. If the Concessionaire has been able to consistently achieve the KPIs for

[20 (twenty)] consecutive days (as supported by daily reports), the Concessionaire shall issue a notice to the Authority requiring the Authority to undertake a final inspection of the

Project Facilities. the Authority shall have the right to undertake such final inspection within [5 (five)] Business Days of a notice being issued by the Concessionaire.

15.13.7. If, upon final inspection, the Authority is satisfied that the Project Facilities meets the KPIs and the Technical Specifications, and are capable of safe and reliable operations, then, the Authority shall issue the Trial Operations Completion Certificate for the Project Facilities to the Concessionaire within [7 (seven)] days of the Authority undertaking a final inspection of the Project Facilities pursuant to Article 14.13.5 above.

15.13.8. If, upon final inspection, the Authority believes that the Project Facilities does not comply with the KPIs and/or Technical Specifications, then the Authority may reject the Project Facilities and terminate this Agreement. Upon termination of this Agreement, in accordance with this Article 15, the consequences set out in Article

24.4.1 and Article 24.4.7 shall follow.

15.13.9. If the Authority: (i) does not undertake a final inspection of the Project Facilities within [5 (five)] Business Days of receipt of a notice from the Concessionaire under Clause 15.13.4; or (ii) fails to notify the Concessionaire of any defects in the Project Facilities within [7 (seven)] days of undertaking a final inspection; or (iii) fails to issue a Trial Operations Completion Certificate within [7 (seven)] Business Days from the date of the final inspection, then the Trial Operations shall be deemed to have been successfully completed for Project Facilities and the Trial Operations Completion Certificate will be deemed to have been issued to the Concessionaire upon the expiry of the [5 (five)] Business Days period (in case of (i)) and upon the expiry of the [7 (seven)] Business Days period (in case of (ii) and (iii))

15.13.10. If the Trial Operations are not successfully completed and/or the Concessionaire fails to issue a notice to the Authority under Article 15.13.5 above on or prior to the Scheduled COD, as may be extended in accordance with Article 15.13.3, for any Project Facilities, then such failure shall be treated as a Concessionaire Event of Default and the consequences set out at Article 16 shall follow.

15.13.11. Notwithstanding anything contained in Article 15.13.8, if the Concessionaire fails to successfully complete the Trial Operations for the Project Facilities on or prior to the Scheduled COD, as may be extended in accordance with Clause 15.13.3, then such failure will be treated as an Authority Event of Default, and the consequences

set out at Article 24 shall follow

15.13.12. The Concessionaire will not be entitled to any payment for conducting the Trial Operations, which shall be carried out solely at the cost and risk of the Concessionaire.

15.14. Commercial Operations Date:

15.14.1. Within [7 (seven)] Business Days from the date of issuance or deemed issuance of the Trial Operations Completion Certificates for the Project Facilities, the Authority shall issue the COD Certificate, subject to the following conditions having been fulfilled by the Concessionaire:

15.14.1.1. the Concessionaire having received the Construction Completion Certificate;

15.14.1.2. the Concessionaire having submitted to the Authority the Scheduled Maintenance Programme for the first-year Post- COD; and

15.14.1.3. the O&M Manual having been approved by the Authority ;

15.14.1.4. the Concessionaire having submitted the Project Facilities O&M Security to the Authority .

15.14.2. If the Authority fails to issue the COD Certificate to the Concessionaire within 7 (seven) Business Days from the date of satisfaction of the conditions set out in Article

15.14.1 above and fails to notify the Concessionaire of any reasons for the failure to issue the COD Certificate, then, the COD Certificate shall be deemed to have been issued to the Concessionaire upon the expiry of the 7 (seven) Business Days period.

15.14.3. The date on which the COD Certificate is issued or deemed to have been issued to the Concessionaire shall be the Commercial Operations Date of the Project Facilities.

15.15. Safety Certification Prior to Project COD

The Concessionaire shall, not later than [15 (fifteen)] days prior to the likely Project

COD, notify the Authorityand the Independent Engineer of the compliance or Safety Requirements and invite them to observe any or all the Tests that may be specified by the Independent Engineer in accordance with Applicable Laws, Applicable Permits and Good Industry Practice to determine that the Project infrastructure is safe for entering into commercial service, and the costs of such Tests shall be shared equally between the Concessionaire and the Authority; provided that in case of failure in any Test requiring repetition thereof, the cost of such second or subsequent Test shall be borne entirely by the Concessionaire.

ARTICLE 16 : OPERATIONS AND MAINTENANCE PERIOD

16.1. Commencement and Duration

The period for the Operation and Maintenance of the Project Facilities, including tasks related to Secondary Transportation, Processing and Disposal, shall commence on and from COD and shall continue for a period of 30 years until the Termination Date (the "O&M period").

16.2. O&M Manual

16.2.1 The Concessionaire shall prepare a detailed O&M Manual for the Project Facilities based on the Proposed Technology and in accordance with the Technical Specifications, the ESHS Documents, Applicable Laws and Applicable Permits. The O&M Manual shall specify the operation procedures (separately for each component of the Project Facilities) and maintenance procedures. In case of any errors or deficiencies in the Technical Specifications, the O&M Manual shall take into account, address or rectify such errors or deficiencies. The Language of the O&M Manual shall be English.

16.2.2 At least 30 (thirty) days prior to the Scheduled Construction Completion Date, the Concessionaire shall submit 4 (four) hard copies and 1 (one) soft copy on a compact disc of the draft O&M Manual to the Authority for its review and approval.

16.2.3 The Authority shall review and provide comments, if any, on the draft O&M Manual to the Concessionaire or notify the Concessionaire of its approval of the draft O&M Manual within 20 (twenty) days from the date of receipt of the draft O&M Manual from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft O&M Manual if the Authority identifies any deficiencies, inaccuracies or shortcomings in the draft O&M Manual. If the Concessionaire receives any comments, suggestions or instructions to modify the draft O&M Manual from the Authority, then the Concessionaire shall modify the draft O&M Manual to correct any shortcomings, inaccuracies or deficiencies identified by the Authority and/or address, in writing, the Authority's comments on the draft O&M manual and submit the revised O&M Manual to the Authority within 10 days of having received the Authority's response, for its approval. The process

set out in this Article 16.2.3 shall continue until the O&M Manual is approved by the Authority in accordance with this Article 16.2.3

16.2.4 The Concessionaire shall revise the O&M Manual as and when the Concessionaire thinks it necessary to do so and in such case the provisions of Article 16.2.3 will apply as is to the approval of the revised manual.

16.2.5 The Concessionaire shall undertake the O&M of the Project Facilities strictly in accordance with the approved O&M Manual. The Concessionaire shall not deviate from or make any amendment to the O&M Manual without the prior written approval of the Authority. The Concessionaire shall not commence operation of the Project Facilities prior to approval of the O&M Manual in accordance with Article 16.2.

16.2.6 Notwithstanding any approval of the O&M Manual by the Authority, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the O&M Manual. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of or updating the O&M Manual and complying with the requirements of Article16.2.

16.2.7 The Concessionaire shall submit a consolidated O&M Manual for the Project Facilities.

16.3. Sub-Contracting

16.3.1 The Concessionaire may enter into Sub-Contracts to perform any part of its Scope of Work during the O&M period, with the prior intimation to the Authority.

16.3.2 The Concessionaire shall provide a copy of each proposed Sub-Contract, along with details of the relevant Sub-Contractor, to the Authority for its approval, which should set out the precise Scope of Work to be Sub-Contracted to such Sub-Contractor and should be consistent with the terms of this Agreement.

16.3.3 Within 7 (seven) days of the execution of an amendment to any approved Sub-Contract, the Concessionaire shall submit a copy of such amendment to the Authority for its records.

16.3.4 If the Concessionaire proposes to novate an approved Sub-Contract and/or replace an approved Sub-Contractor, then such novation or replacement shall be with prior intimation to the Authority.

16.3.5 Notwithstanding the approval of any Sub-Contractor by the Authority, the Concessionaire shall be and remain liable under this Agreement for all work and services subcontracted under this Agreement and for all acts, omissions or defaults of any Sub-Contractor. No default under any Sub-Contract shall excuse the Concessionaire from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Sub-Contractors.

16.4. Concessionaire's rights and obligations

16.4.1 The Concessionaire shall operate and maintain the Project Facilities in a manner that:

- is in compliance with the Technical Specifications, Applicable Laws, Applicable Permits and Good Industry Practice.
- results in the Project Facilities achieving the KPIs as per Article 19;
- ensures that each of the Project Facilities is capable of operating up to its design capacity on a daily basis;
- is safe and reliable, subject to normal wear and tear of the Project Facilities;
- is in compliance with the technology license agreement(s) executed by the Concessionaire for the technology, processes, know-how and systems used or incorporated into the Project Facilities;
- maintains the safety and security of personnel, material and property at the Site(s), in accordance with the approved ESHS Documents, Applicable Laws and Applicable Permits;
- ensures that all waste materials and hazardous substances are stored and/or disposed in accordance with the ESHS Documents, Applicable Laws and Applicable Permits; and
- rectify, cure, remedy all defects, deficiencies, defaults, damage, etc., all of the Project Facilities at its own cost and risk.

16.4.2 The Concessionaire shall provide adequate power backup at the Site(s) (including through installation of DG Sets) to ensure continuous supply of power (even during any interruption(s) in the supply of power from the grid) for the uninterrupted operations of the Project Facilities during the O&M period.

16.4.3 The Concessionaire shall provide all necessary assistance to the Independent Engineer, and the Authority in undertaking inspection and monitoring of the O&M of the Project Facilities.

16.4.4 The Concessionaire shall reasonably consider and act upon the comments/suggestions made by the Independent Engineer and the Authority during any meetings of the Concessionaire with its Sub-Contractors.

16.4.5 The Concessionaire shall provide the Authority and the Independent Engineer with reasonable access to the Site(s) during office hours to monitor and inspect the Project Facilities.

16.4.6 The Concessionaire shall arrange for all equipment, machinery, tools and other resources required to undertake the O&M of the project Facilities and shall take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Sub-Contractors' personnel or equipment, to or from the Site(s), does not interfere with local traffic in the vicinity of the Site(s).

16.4.7 The Concessionaire shall develop and implement a safety and surveillance programme for the Project Facilities and for handling and disposal of the residual inert matter and adopt appropriate measures and safeguards for security of the environment, life, and property at the Site(s).

16.4.8 The Concessionaire shall ensure that none of its employees, consultants, service providers, suppliers, or Sub-Contractors, including any O&M contractor appointed by the Concessionaire, shall engage in any corrupt, fraudulent, collusive, coercive or obstructive practice.

16.5. Rights and obligations of the Authority

16.5.1 During the O&M period, the Authority shall:

- comply with all its obligations under Applicable Laws (including, specifically the [Act applicable in the State] Act) and Authority Applicable Permits;
- monitor and review the operations and performance of the Project Facilities. This includes the right to access the Project Facilities, and review the records and reports that the Concessionaire is required to maintain, during normal working hours;
- review the Scheduled Maintenance Programme and all other plans and documents submitted by the Concessionaire in an expeditious manner, in accordance with this

Agreement;

- ensure that the Escrow Account is funded with the Minimum Escrow Balance; and
- ensure that the Concessionaire continues to enjoy peaceful access to the Site(s) and shall not assign, transfer, or otherwise dispose of its rights, title, and interest in the Site(s) or create any Encumbrance over any part of the Site(s), which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement.
- Make tipping fee payments in accordance with this Agreement;
- Ensure that the Escrow account is funded with the Minimum Escrow Balance

16.6. Utilities

16.6.1 The Concessionaire shall apply for and obtain the power connection (at the battery limit of the relevant Site(s)) for the operation of the Project Facilities, in its name, at least 30 (thirty) days prior to the Scheduled Construction Completion Date. The Concessionaire shall provide all necessary assistance to Authority in procuring the power connection, including by providing all documents and information necessary to complete the application process.

16.6.2 The Concessionaire shall install and maintain at its cost, all utilities (other than power) necessary for the O&M of the Project Facilities, including water, telephone connections, internet connections, etc. at the Site(s). The Authority shall only provide support for utilities like access roads, drainage, power, water as per Clause 4.1.2. (h). Specifically, to procure water for the O&M of the Project Facilities, the Concessionaire may dig bore wells at the Site(s) after obtaining all Applicable Permits (including any no-objection certificates from the Central Ground Water Authority or the relevant authority)

16.6.3 The Concessionaire shall not be entitled to any additional costs to comply with its obligations in Article 16.6.

16.6.4 Authority shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the O&M of the Project Facilities

16.7. Monitoring and Reporting

16.7.1 Online Monitoring and Meters

- At the Project Facilities Sites, the Concessionaire shall install and maintain an online monitoring system, in accordance with the Technical Specifications and Applicable

Laws (including specifically, the EPA) to monitor the volume, specifications and characteristics of the incoming Solid Waste and ensure that the Project Facilities are capable of operating up to its design capacity on a daily basis. The online monitoring devices should be capable of measuring and analyzing the quantum and characteristics of the Solid Waste at the Processing facility and decentralized units and of the quantum and quality of disposables discharged from the Sites.

- Online monitoring system shall maintain a record for equipment's historical running information, status, faults, and any other parameters required to judge its conditions. Such monitoring shall be conducted in accordance with Applicable Laws and Good Industry Practices
- The Concessionaire shall record and transmit all data collected from the online monitoring systems and the meter reading of the grade, volume and characteristics of the incoming Solid Waste and the processed disposables. The Concessionaire shall furnish a summary report for the Project Facilities to Authority (with a copy to the Independent Engineer) on a daily basis, which shall indicate: (A) the quantum of the Solid Waste received at the relevant Project Facility(ies) and the quantum of the processed disposables including compost from the relevant Project Facility(ies) of the relevant day; and (B) the periods during which the quantum of Solid Waste received at the relevant Project Facility(ies)exceeded its design capacity.
- The Concessionaire shall also be required to upload the periodic reports from the online monitoring on the Central Pollution Control Boards website.
- The Concessionaire shall maintain the online monitoring systems and meters at its own cost and expense for the entire concession Period.
- At Project Facility (ies), the Concessionaire shall also install meters and gauges at the DG Sets to measure the total number of energy units (in kWh) consumed from the DG Sets in each month of the O&M Period.
- If the Concessionaire sets up a Waste to Energy Plant(s), then the Concessionaire shall install meters at the Waste to Energy Plant(s) to measure the total number of energy units (in kWh) generated from the Waste to Energy Plant(s) in each month of the O&M Period
- The meters shall be calibrated once every year during the O&M Period in accordance with Good Industry Practices and the meters shall be jointly tested by Authority and the Concessionaire to ensure the accuracy of the meters installed by the Concessionaire.

16.7.2 Records and Reporting Requirements

- The Concessionaire shall maintain:

- records of the quantum and characteristics of the Solid Waste received at, and the processed disposables discharged from the Project Facilities; and
- books of accounts recording all payments received from the Authority and other revenues derived/collected by it from the Project Facilities or resulting from its use, separately for each of the Project Facility and Site.
- The Concessionaire shall provide to Authority, 2 (two) copies of its audited financial statements along with a report from its statutory auditors, within 90 (ninety) days ofthe close of each Financial Year.
- For Project Facilities, the Concessionaire shall deliver to Authority, with a copy to the Independent Engineer, the following during the O&M Period within the specified timelines:
    - reports relating to any activity, problem, incident or circumstance that threatens or may threaten public health, safety, the environment or the safety and security of the Project Facilities, and any action taken to mitigate the effect of such incident or problem, as soon as reasonably practicable but no later than 12 (twelve) hours after the occurrence of such event or circumstance;
    - reports on any critical breakdowns or failures in the Project Facilities, within 12 (twelve) hours of such occurrence;
    - reports on accidents or other incidents in relation to the O&M personnel or any third party, along with statements on actions taken to minimise recurrence, within 2 (two) days of such occurrence;
    - daily reports with the data collected from the monitoring and metering system, the online monitoring system and the tests conducted by the Concessionaire in accordance with Clause 15.9 on the characteristics and volume of Solid Waste treated at the Project Facilities, processed disposables discharged from the Project Facilities, at the end of each day (i.e., on or before [1500 hours] every day);
    - monthly progress reports relating to the performance of O&M services (including on compliance with the KPIs, details of disposal or sale, as the case may be, of the processed disposables, and details of any Emergency during the relevant month), on or before the 7th (seventh) day of the following month. The monthly progress report must be certified by the Independent Engineer before it is submitted to Authority;
    - copies of any reports, notices or responses submitted for compliance/noncompliance with Applicable Laws or Applicable Permits, within 2 (two) days of making such submissions to the relevant Government Authority;

and

- reports on any material litigation, including any winding-up proceedings or notice to commence winding-up proceedings or material disputes to which the Concessionaire is a party, appointment of a receiver or administrator in relation to the business or assets of the Concessionaire and any adverse orders or judgments passed by any Government Authorities that affects or is likely to affect the performance of the O&M services, as soon as reasonably possible after the occurrence of any such event.
- It is clarified that the reports set out in this Clause 16.7 will be separately prepared and furnished for each of the Project Facilities.

16.8. Design Capacity Utilization

16.8.1 During each day of the O&M Period, the Concessionaire shall ensure that Project Facilities can accept and process Solid Waste up to its design capacity.

16.8.2 The Concessionaire shall notify Authority (with a copy to the Independent Engineer) as soon as it becomes aware that the quantum of Solid Waste received at the relevant Project Facility is more than its design capacity.

16.8.3 In such circumstances, if the Concessionaire is unable to accept and process the excess Solid Waste (i.e., over and above the design capacity) at the relevant Project Facility, then such failure shall be treated as a Forced Unavailability for which the Concessionaire shall not be liable, subject to the Concessionaire having notified Authority in accordance with Article 16.8.2 above. Authority reserves the right to require the Independent Engineer to verify the capacity utilization at any Project Facility, at any time during the O&M Period.

16.9. Maintenance and Repair of the Project Facilities

16.9.1 During the O&M Period, the Concessionaire shall, at its own cost, undertake the maintenance of the Project Facilities and repair any damage to the Project Facilities either by itself, or through an approved Sub-Contractor, such that the Project Facilities shall be:

- in good working condition (subject only to wear and tear and Force Majeure) and achieve their full useful economic life in accordance with the Designs and Drawings;
- maintained in compliance with the Technical Specifications, O&M Manual, Scheduled Maintenance Programme, Applicable Laws, Applicable Permits, Good Industry

Practice and the recommendations of the technology providers;

- capable of meeting the KPIs as per Article 19.

16.9.2 For the first year of the O&M Period, the Concessionaire shall submit its scheduled maintenance programme for the Project Facilities, specifying the Scheduled Maintenance periods for the Project Facilities and the impact of such Scheduled Maintenance periods on the Availability of each of the Project Facility (the "Scheduled Maintenance Programme") to the Authority at least 1 (one) month before the Scheduled COD and for every subsequent year of the O&M Period, the Concessionaire shall submit the Scheduled Maintenance Programme, at least 1 (one) month prior to the beginning of the relevant year. The Scheduled Maintenance Programme for the first year will cover the period from the COD until the end of the calendar year in which the COD occurs. It is clarified that the Concessionaire shall submit a consolidated Scheduled Maintenance Programme for the Project Facilities.

16.9.3 Within 15 (fifteen) days of receipt of the Scheduled Maintenance Programme, Authority shall notify the Concessionaire of its approval of such schedule.

If Authority does not accept any one or more of the requested Scheduled Maintenance periods or its impact on the Availability of a Project Facilities, Authority shall advise the Concessionaire within 15 (fifteen) days of the receipt of the Scheduled Maintenance Programme on when any Scheduled Maintenance can be rescheduled or how its impact on the Availability of a Project Facilities may be minimized. The rescheduled time shall be as close as reasonably practicable to the requested time and shall be of equal duration as the requested period. If Authority fails to object to any Scheduled Maintenance within the specified time period or fails to advise the Concessionaire of a substitute time, the Concessionaire may schedule the Scheduled Maintenance for such duration and at such time as initially requested.

- Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Article 15.9, Authority may require the Concessionaire to reschedule a Scheduled Maintenance in the Scheduled Maintenance Programme, provided that:

- Authority has given the Concessionaire at least 30 (thirty) days‟ prior

- written notice of such re-scheduling;

- Authority shall not require such Scheduled Maintenance to be rescheduled for a period of shorter or longer duration;

- Authority shall not require that a single Scheduled Maintenance period be split into two or more periods; and
- Authority shall not require that a Scheduled Maintenance be brought forward any earlier than 15 (fifteen) days from the date of such notice without the consent of the Concessionaire.
- Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Clause 15.9, the Concessionaire may request a rescheduling of any Scheduled Maintenance upon 60 (sixty) days‟ prior written notice to Authority. Authority shall respond to such request within 10 (ten) days and shall not unreasonably withhold its permission for such re-scheduling.
- Within 5 (five) days of any re-scheduling of a Scheduled Maintenance, as may be approved by the Authority, the Concessionaire shall provide to Authority, the amended Scheduled Maintenance Programme, which shall then be the "Scheduled Maintenance Programme".
- During the O&M Period, the Concessionaire shall, at its own cost, replace any component or part of the Project Facilities that is damaged or worn out or in the Concessionaires judgment becomes no longer practicable to repair as a result of normal wear and tear.
- If at any time during the O&M Period, a Project Facilities is damaged by a Minor Casualty, the Concessionaire shall, with reasonable diligence, proceed to process the claim with insurance providers and at its own cost, repair, replace, and restore the damaged portion of the Project Facilities to the same condition that it was in before the occurrence of such Minor Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.

  If at any time during the O&M Period, a Project Facilities is damaged by a Total Casualty, then this Agreement shall be terminable at the option of the Concessionaire. If the Concessionaire elects to terminate the Agreement, then the consequences set out in Article 24 will follow. If, however, the Concessionaire elects not to terminate the Agreement, then the Concessionaire shall repair, replace and restore the damaged Project Facilities to the same condition that it was in before the occurrence of such Total Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.

16.10. Remedial measures

If after the COD, the Concessionaire ceases to operate Project Facilities for a period of 48 (forty eight) consecutive hours other than due to a Forced Unavailability, Scheduled Maintenance, or a suspension pursuant to Article 21, which is not attributable to the Concessionaire, or a Force Majeure Event, without the prior written consent of Authority, then Authority shall be entitled to step-in and undertake O&M of such Project Facilities until the Concessionaire demonstrates to the satisfaction of Authority that it can and will resume normal operation and maintenance of the Project Facilities. The exercise of Authority's rights under this Article 15.10 shall be at the cost, risk and expense of the Concessionaire. The Concessionaire shall not be entitled to receive any O&M Charges for the duration that Authority steps-in to operate and maintain the Project Facilities.

16.11. O&M Personnel

16.11.1 The Concessionaire shall engage (either directly or through an approved Sub-Contractor) adequate number of suitably skilled and qualified personnel to undertake the O&M of the Project Facilities in accordance with the requirements set out in this Article 15.

16.11.2 The Concessionaire shall be solely responsible for discharging all obligations in connection with the employment of the O&M personnel, including the payment of wages, salaries, Taxes, and retrenchment compensation and providing all amenities and benefits required under applicable laws.

16.11.3 Subject to compliance with the Applicable Laws, the Concessionaire shall have full freedom to determine its internal human resources (HR) policies, including, the wages, benefits and salary structure of its employees, the conditions of service, the sshifts of work, its hire and fire policy (whether for misconduct or other cause), and payment of severance or retrenchment compensation.

16.11.4 Authority is not and shall not be treated as the "principal employer" of or be deemed to have any contractual or other relationship with the O&M personnel. The Concessionaire shall hold harmless and indemnify Authority against all losses, claims, costs and damages that Authority may suffer due to the Concessionaire's or any of its Sub-Contractor's failure to comply with Applicable Laws.

ARTICLE 17 : MONITORING AND INSPECTION

17.1. During Pre-COD Period

17.1.1 Monthly Progress Reports

During the Pre-COD Period, the Concessionaire shall, not later than 7 (seven) days after the close of each month, furnish to the Independent Engineer, a monthly report bringing out in detail the progress made by the Concessionaire and also organise monthly review meetings with respect to its Scope of Work, including *inter-alia* the Processing facility (including the power plant, if any), Project Facilities and any such information as may be considered essential by the Independent Engineer.

17.1.2 Inspection

During the Pre-COD Period, the Independent Engineer shall inspect or cause to be inspected the Project Facilities at least [once a month] or at such shorter intervals as may be considered essential by the Independent Engineer and make report of such inspection (the **"Pre-COD Inspection Report"**) stating in reasonable detail the delay or deficiencies, if any, with particular reference to the Scope of Work, specifications, Good Industry Practices, and Applicable Laws.

It shall send a copy of such a Report to the Concessionaire within 2 (two) days of such inspection/ observation and upon receipt thereof, the Concessionaire shall rectify and remedy the observations, if any, stated in the Inspection Report. Provided however, such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

17.1.3 Tests

For determining that the Project Facilities conform to the specifications and requirements of this Agreement, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer/the Authority from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. For the avoidance of doubt, the

costs to be incurred on any such test undertaken shall be borne solely by the Concessionaire. In the event that results of any tests conducted under this Article 17.1.3 above establish any defects or deficiencies in the works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. For the avoidance of doubt, it is agreed that tests pursuant to this Article 17.1.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests should be sent by the Concessionaire to the Independent Engineer forthwith.

17.2. Post-COD period

17.2.1 Monthly Status Reports

During Post-COD Period, the Concessionaire shall, not later than 7 (seven) days after the close of each month, furnish to the Independent Engineer a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, the quantity of Waste Transported, processed and Disposed and shall promptly give such other relevant information as may be required by the Independent Engineer. In particular, such a report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

17.2.2 Inspection

17.2.3 The Independent Engineer shall inspect or cause to be inspected the execution of the Project at least [once a month]. It shall make a report of such inspection (the "Post- COD Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with reference to the Maintenance Requirements, maintenance manual, KPIs or requirements as set forth in this Agreement including Schedules/ Schedules, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Post-COD Inspection Report. Such inspection or submission of Post-COD Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

17.2.4 Remedial measures

- The Concessionaire shall repair or rectify the defects or deficiencies, which have impact on the operations/ efficiency of the Project, if any, set forth in the Post-COD Inspection Report and furnish a report in respect thereof to the Independent Engineer within 15 (fifteen) days of receiving the Post-COD Inspection Report; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports to the Independent Engineer of the repair works [once every week] until such works are completed in conformity with this Agreement.

- In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Independent Engineer/ the Authority shall be entitled to recover Damages from the Concessionaire at the rate of [0.1% (zero-point one percent)] of Performance Security for each day of delay beyond the period specified for rectification of such defect or deficiency by the Independent Engineer/the Authority.

17.2.5 Authority's right to take remedial measures

- In the event the Concessionaire does not maintain and/or repair the Project Facilities/ Project Assets or any part thereof in conformity with the Maintenance Requirements, maintenance manual or KPI or requirements as set forth in this Agreement including Schedules/ Schedules, and fails to commence remedial works within 15 (fifteen) days of receipt of Post-COD Inspection Report or notice in this behalf from the Authority, the Authority shall, without prejudice to its right under this Agreement including termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, an additional sum equal to [10% (ten percent)] of such cost shall be paid by the Concessionaire to the Authority as damages.

- The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in this Article directly from the Escrow Account, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Article. Any demand from the Authority stating that a specified amount is payable shall be final, binding and conclusive on the Concessionaire and Escrow Bank and Escrow Bank shall pay and Concessionaire shall cause the Escrow Bank to pay such amount without any demur, delay, cavil or protest on receiving a demand for such costs and Damages.

ARTICLE 18 : PAYMENTS

18.1. Payment during Concession Period

Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, the Authority agrees and undertakes to pay Tipping Fee for each Ton of MSW Transported and Processed to the Concessionaire as per this Article.

The capital investment must be done fully by the Concessionaire from their own financing sources. As per the RFP conditions there shall not be any financial support in any manner by either by the Authority, beyond the payment of tipping fees.

18.1.1 **Bid Project Cost: NOT APPLICABLE**

18.1.2 **Adjusted Bid Project Cost: NOT APPLICABLE**

18.1.3 **Payment of Bid Project Cost: NOT APPLICABLE**

18.1.4 **Payment during Construction Period: NOT APPLICABLE**

18.1.5 **Bonus on early completion: NOT APPLICABLE**

18.1.6 **Payment During Operation & Maintenance:**

- **Tipping Fee Amount:**

The following Tipping Fee rate per Metric Ton has been accepted during the Agreement for the entire Project (including Secondary Transport and Processing and Disposal (P&D)) ("Overall Tipping Fee"). The same shall be paid on a per Ton basis for the first year after COD, distributed across Secondary C&T and P&D. The Tipping Fee rate shall be escalated at the rate of 5 per cent year-on-year, every year after the 1st year post COD.

Item	**ACCEPTED RATE FOR TIPPING FEE (for the 1st Year after COD)**	
Overall Tipping Fee	**Per Metric Ton Rate**	_____
Secondary Transportation Tipping Fee	50% of the Accepted Overall Tipping Fee	
P&D Tipping Fee	50% of the Accepted Overall Tipping Fee	

The proportion of the Overall Tipping Fee determined towards Secondary Transportation: Processing & Disposal is 50:50. That is, if the Overall Tipping Fee

is Rs. 100/TPD,

- the Tipping Fee towards the scope of work of Secondary Transportation, as defined in Article 2 and this Agreement, shall be thereafter defined as 50% of the same (i.e., Rs 50/TPD) ("Secondary Transportation Tipping Fee"), and
- the Tipping Fee towards the scope of work of Processing & Disposal, as defined in Article 2 and this Agreement, shall thereafter be defined as 50% of the same (i.e., Rs.50/TPD) ("P&D Tipping Fee"),
- Such that Overall Tipping Fee = Secondary Transportation Fee + P&D Tipping Fee.

The above quoted rates are inclusive of all taxes, duties and levies, but excluding GST which will be paid by the authority at actual as per prevailing norms and rate if applicable during the entire concession period.

- **Distribution of Tipping Fee Payable & Penalties**
  - The tipping fee shall be paid in 2 Tranches.
    - **Secondary Transportation Tipping Fee:**
  - Tranche 1 (Fixed Tipping Fee): 60% of the payment shall be processed as soon the invoice is submitted by the Concessionaire.
  - Tranche 2 (Variable Tipping Fee): Balance 40% of the payment shall be released after (a) verifying the actual quantities based on online tracking and weighment mechanism and (b) after deduction of penalties due to non-adherence of KPIs as per Article 19.
    - **P&D Tipping Fee:**
  - Tranche 1 (Fixed Tipping Fee): 60% of the payment shall be processed as soon the invoice is submitted by the Concessionaire.
  - Tranche 2 (Variable Tipping Fee): Balance 40% of the payment shall be released after (a) verifying the actual quantities processed at the ISWM facility based on input weighment, the quantity of inerts disposed, random checking and certified by the independent engineer and (b) after deduction of penalties due to non-adherence of KPIs as per Article 19.
- **Mechanism of Payment**
  - All payments to the Concessionaire by Authority shall be made by way of Account transfer.
  - Authority shall deduct/ withhold the Statutory deductions, such as Income Tax, any

penalties for operational breaches, which is determined to be due and payable, as specified in Article 18 and 19, and any other recoveries under the terms of this Agreement.

- To facilitate the payment of Tipping Fee to the Concessionaire, the Concessionaire, the Authority and a reputable Bank, acceptable to the Concessionaire, hereby referred to as "Escrow Agent", shall enter into an agreement for the opening and operation of Escrow Account, hereby referred to as "Escrow Agreement", as per the Schedule 17: Escrow Agreement;
- The Authority or Authority of Karnataka (GOK) shall deposit an amount equal to the estimated Tipping Fee Payment for 3 (three) months, calculated based on the estimated monthly waste to be managed for three months as specified in the DPR to be prepared by the Concessionaire multiplied by the relevant Tipping Fee per tonne, in the Escrow Account within 15 (fifteen) days of signing of the Escrow Agreement.
- The Authority shall replenish the Escrow Account with Replenishment Amount within 15(fifteen) days, or the following working day in case the 15th day is a holiday, of the Replenishment Request from the Authority and subsequently the Escrow Agent shall intimate the Concessionaire for the same.
- In the event, the Authority fails to replenish the amount within the stipulated time, the Concessionaire shall send a written request ("Urgent Replenishment"), to the Authority to replenish the Escrow Account within 7 days, or the following working day in case the 7th day is a holiday, of such a request.

- **Payment of Tipping Fee:**
  - The Concessionaire shall, on the 7th day of every Month or in case the 7th day of a Month is a holiday then on the following working day of such Month, submit to the Independent Engineer an Invoice statement (-Tipping Fee Statement) providing the following details, in the manner as set out in the O&M Requirements:
    - Separate Statement of total quantity/weight of Municipal Solid Waste undertaken for Secondary Transportation to processing site(s) by the concessionaire along with the corresponding weigh bridge slips in the previous Month from the Authority's Jurisdiction Area including other such areas as directed by the Authority from time to time
    - Separate Statement of total quantity/weight of Municipal Solid Waste processed at the processing site by the concessionaire along with the corresponding weigh bridge slips in the previous Month from the Authority's Jurisdiction Area

including other such areas as directed by the Authority from time to time

- Amount payable, if any, to the Concessionaire by the Authority in accordance with Article 19, distributed into Tranche 1 and Tranche 2, and across Secondary Transportation and P&D.
- Quantity of Landfill Waste on each day of the previous Month along with Weigh Bridge slips.
- Aggregate quantity of Landfill Waste for the previous Month

o Any Invoice raised by the Concessionaire for O&M Payments shall be accompanied with a copy of the: (A) KPI adherence report for [the month], duly certified by the Independent Engineer; (B) copy of the bill(s) and invoices certified by the Independent Engineer; and (C) daily weights sheets of the electronic weighbridge installed at the entrance of the Existing Processing Facilities Site/Transfer Stations, duly verified and approved by the Independent Engineer. If the Invoice is not accompanied with the supporting documents specified at (A), (B) and (C) above, the Authority shall not be required to process such Invoice.

o The Independent Engineer shall review and certify the Tipping Fee Statement of the month, the statement of MSW quantum handled from the Project jurisdiction area and support documents submitted by the Concessionaire. The Independent Engineer shall submit to the Authority an invoice statement of the amount payable for the month along with the original monthly bill and all the supporting documents submitted by the Concessionaire basis their evaluation. The same shall be done in two parts: for the amount pertaining to Tranche 1 payments, the Independent Engineer should process and recommend within 7 working days of the receipt of the Tipping Fee Statement from the Concessionaire, and within 21 days for the Tranche 2 of the Payment. The Independent Engineer shall also ascertain the amount of tipping fees to be withheld as per provision of Article 19.

o Within 7(seven) working days of receipt of an invoice from the Independent Engineer, Authority shall either:

- approve the Invoice and issue a Payment Certificate to the Escrow Bank with a copy to the Authority and the Concessionaire, conveying its approval for the release of the amount specified in the Invoice, less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws (including any statutory dues); or
- issue a notice to the Concessionaire disputing the Invoice and directing the Concessionaire to issue a revised Invoice, after rectifying the errors or discrepancies identified by the Authority.

- The Concessionaire shall submit a revised Invoice to the Authority, revalidated and certified by the Independent Engineer, and the Authority after rectifying the errors or discrepancies identified by the Authority and this process will be repeated until the Authority approves the Invoice and issues a certificate to the Escrow Bank, with a copy to the Authority and the Concessionaire, conveying its approval for release of the amount specified in the Invoice
- Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 27.
- If, within such time, Authority does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by the Authority, and the Concessionaire may issue instructions to the Escrow Bank with a copy to The Authority , to release the amounts specified in the Invoice, upon the expiry of the 10 (ten) day period.
- Immediately upon receipt of a Payment Certificate or upon receipt of instructions from the Concessionaire the Escrow Bank shall release the amount specified in the Payment Certificate or if no Payment Certificate has been issued, then the amount specified in the relevant Invoice, in accordance with the Escrow Agreement.
- Notwithstanding anything to the contrary in this Agreement, the Authority shall have no obligation to issue a Payment Certificate unless:
  - the O&M Securities remain valid and in effect
  - the insurances to be obtained by the Concessionaire in accordance with Article 28 are valid and in effect;
  - the Concessionaire Applicable Permits for MSW of the Project Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;
  - the Concessionaire has complied with the ESHS Documents in undertaking the MSW of the Facilities; and
  - there is no subsisting Concessionaire Event of Default.

18.2. Escrow Account

- Prior to the COD Date, the Concessionaire, the Authority and the Escrow Bank shall enter into the Escrow Agreement and the Concessionaire shall open the Escrow Account with the Escrow Bank in accordance with the Escrow Agreement, which shall be operational until the expiry of the Concession Period. The Escrow Agreement shall set out the terms of appointment of the Escrow Bank and terms of withdrawal of

amounts from the Escrow Account on monthly basis.

- Minimum Escrow Balance: At all times, to maintain the minimum balance in the Escrow Account (the "Minimum Escrow Balance"):
    - On and from the COD until Termination Date, the Authority shall deposit the O&M Payments in the Escrow Account such that the Escrow Account is funded at all times, the O&M Charges as tipping fees, the Authority shall be entitled to withdraw amounts from the Escrow Account in accordance with the provisions of this Agreement and the Escrow Agreement.

If at any time during the O&M Period, the balance in the Escrow Account falls below the Minimum Escrow Balance, the Authority shall promptly, and in any event, no later than 90 (ninety) days, fund the Escrow Account such that the Minimum Escrow Balance is maintained. A failure to maintain the Minimum Escrow Balance for 90 (ninety) days would be treated as an Authority Event of Default and the consequences set out in Article 24 would follow.

It is clarified that any interest earned on the amounts deposited by the the Authority in the Escrow Account will be counted towards the Minimum Escrow Balance.

- The Concessionaire shall be entitled to withdraw amounts from the Escrow Account in accordance with the provisions of this Agreement and the Escrow Agreement.

18.3. Taxes
Deleted

18.4. Default Interest:

Upon any Party's failure to make a payment due and payable by it on the due date for such payment, the defaulting Party shall be liable to pay default interest on all such outstanding amounts at the prevailing 1- year SBI MCLR + 3% (three per cent) per annum or part thereof. This is without prejudice to any Party's right to terminate this Agreement in accordance with Article 23 or any other right or remedy available to it under this Agreement or Applicable Laws. For the avoidance of doubt, it is hereby clarified that the Authority shall be liable to pay interest on delayed payments of tipping fees to the Concessionaire if more than 90 days have elapsed since the recommendation for payment received from the Independent Engineer

18.5. Disputed Amounts

- The Parties shall, within [10 (ten)] days of receiving the amount due and payable to it,

shall notify the other Party of the disputed amounts along with details thereof (the "Disputed Amounts"). Within [7 (seven)] days of receiving such notice, the defending Party shall present any information or evidence as may be reasonably required for determining that such Disputed Amounts are not payable. The Parties may, if necessary, meet a representative of the other Party for resolving the dispute and in the event that the dispute is not resolved the Dispute Resolution Procedure in accordance with Article 27 shall apply.

- If any amount is payable by either Party upon determination of a dispute regarding any Disputed Amount such amount shall be deemed to be payable on the date when it first became due and interest for the period of delay shall be due and payable at the rate specified in Article18.

18.6. Set-off: NOT APPLICABLE

18.7. Power Tariff: NOT APPLICABLE

ARTICLE 19 : KEY PERFORMANCE INDICATORS

19.1. Key Performance Indicators

19.1.1 For Secondary Transportation

- **Availability of Vehicles**: This Key Performance Indicator (KPI) refers to the percentage of the secondary transport vehicle fleet that is operational and ready for service at any given time. By maintaining high availability, the downtime of vehicles is reduced, thereby maximizing overall asset utilization. Ensuring a sufficient number of vehicles are readily available directly supports efficient waste collection, transport, and disposal activities. All secondary transport vehicles—including hookloaders, containers, and other relevant assets—are required to be equipped with operational GPS and RFID technology to be considered Available. This measure enhances vehicle tracking, compliance, and governance by allowing real-time monitoring of their movements. Such a requirement promotes accountability in service delivery and optimizes logistics management.
- **Assured Quantity Transported to Existing Commitments**: This KPI ensures that the prescribed volume of waste is consistently transported to facilities or disposal sites in line with established contractual or regulatory obligations. By fulfilling these commitments, the authority demonstrates reliable service provisioning, maintains public trust, and aligns with all relevant regulations and stakeholder agreements.
- **Transportation Done from Dry Waste Collection Centers (DWCCs)**: This KPI focuses on quantifying and monitoring the amount of waste awaiting transport at designated DWCCs. Through regular scheduling and oversight, the accumulation of waste at these centers is prevented. Prompt and consistent collection from DWCCs upholds cleanliness standards, fosters environmental responsibility, and maintains smooth downstream operations.
- **Throughput at the Transfer Station**: This KPI measures the proportion of waste that is forwarded from the Transfer Station relative to the total volume of waste received. A high throughput percentage indicates that waste is moved promptly and does not linger at the facility, reducing the risk of operational backlogs. Ensuring minimal buildup of waste is essential for maintaining hygienic conditions and optimizing resource utilization.
- **Availability of Transfer Stations**: This KPI gauges the number of Transfer Stations that are functioning at or above their designed capacity, with the

capability to accept and process incoming waste. By keeping these facilities fully operational, the authority ensures steady waste management services, upholds regulatory obligations, and maintains overall system resilience.

- **Waste Segregation**: This KPI emphasizes the need to preserve the integrity of source-separated waste. It stipulates that different waste fractions must not be mixed during handling and that no additional segregation should be performed at the Transfer Station. Upholding segregation standards safeguards facility cleanliness, prevents cross-contamination, and aligns with sustainable waste management practices.

19.1.2 For Processing & Disposal

- **Availability of Plant Facilities:** This Key Performance Indicator (KPI) measures the percentage of time the facility is capable of receiving and processing waste at or near its design capacity. By maintaining a high availability rate, downtime is reduced and asset utilization is optimized. Reliable facility availability underpins efficient waste management and prevents accumulation or backlog of materials.
- **Extent of Recovery:** This KPI tracks the percentage of incoming waste that is actually processed—whether recycled, reused, or otherwise diverted—relative to the total waste received. Monitoring recovery rates ensures the facility is performing as intended, moving materials effectively, and minimizing the volume of residual waste.
- **Output Efficiency:** This KPI represents the ratio of useful outputs—such as recyclables or Refuse-Derived Fuel (RDF)—to the total amount of waste processed at the plant. A higher output efficiency indicates an effective conversion process and demonstrates the facility's ability to add value by recovering resources while reducing final disposal requirements.
- **Waste Landfilled:** This KPI indicates the percentage of total input waste sent to landfill after all possible recovery, reuse, or conversion processes have been applied. Keeping this figure low is essential to minimize environmental impacts, maximize resource recovery, and uphold sustainable waste management practices.
- **Quality of Disposed Waste:** This KPI examines whether the residual waste going to landfill meets the required environmental standards—confirming that the material is inert, non-combustible, and safe. Ensuring compliance limits the risk of pollution and reinforces the facility's long-term environmental responsibility.

- **Liquid Discharge:** This KPI addresses the volume and composition of liquid effluents released from the facility. Effective monitoring and treatment of these discharges protect local water bodies, ensure adherence to water management norms, and promote a safe environment for the community.
- **Environmental Compliance**: This KPI tracks the facility's overall emissions to ensure that it stays within prescribed pollution control limits. Compliance demonstrates responsible environmental stewardship and supports the well-being of surrounding communities.

19.2. Schedule of Penalties:

- The following table lays out an example of the distribution of Tipping Fee into Fixed Tipping Fee (Tranche 1) and Variable Tipping Fee (Tranche 2).

<table>
<tr><th>Tipping fee approved</th><th>Secondary Transport : P&D</th><th>Segment-wise Tipping fee</th><th>Gross Tipping Fee (without accounting for penalties)</th><th>Tipping Fee payable</th></tr>
<tr><td rowspan="4">Total Tipping Fee approved = TFA = 100X

(Bid amount + 5% escalation p.a.)</td><td rowspan="2">Secondary Tipping Fee approved = TFA1 = 50X</td><td>Fixed Tipping Fee approved = FTFA1 = 30X</td><td>FTP1 = 30X*Transport Weight</td><td>FTP1</td></tr>
<tr><td>Variable Tipping Fee approved = VTFA1 = 20X</td><td>VTP1 = 20X*Transport Weight</td><td>VTP1 minus penalties as per Table 19.2 (a)</td></tr>
<tr><td rowspan="2">P&D Tipping Fee approved = TFA2 = 50X</td><td>Fixed Tipping Fee approved = FTFA2 = 30X</td><td>FTP2 = 30X*P&D Weight</td><td>FTP2</td></tr>
<tr><td>Variable Tipping Fee approved = VTFA2 = 20X</td><td>VTP2 = 20X*P&D Weight</td><td>VTP2 minus penalties as per Table 19.2 (b)</td></tr>
</table>

- The Tables 19.2 (a) and 19.2 (b) lay out the Penalty structure for non-compliance with the KPIs as mentioned in the Clause 19.1, for Secondary Transportation and Processing & Disposal parts of the scope respectively.
- **Payment Dockers:**

  In addition to the KPIs laid out in Tables 19.2(a) and (b), three criteria shall act as dockers for the payment of Tipping Fee:

- Report of wages paid to manpower must be submitted every month with the invoice; if previous month's wages are due for more than 75% personnel, no payment shall be processed till they are cleared. (Tranche 1 as well as Tranche 2, for both Secondary Transport and P&D).
- If in any month, the amount of waste processed by the Concessionaire is less than 75% of the waste received by the Concessionaire for Secondary Transportation at the Transfer Stations (deducting the waste delivered to the Pre-existing commitments of the Authority) in that month, the Variable Tipping Fee for Secondary Transportation shall not be paid in that month, irrespective of the KPIs.
- If in any month, the amount of waste processed by the Concessionaire is less than 75% of the waste delivered to the Project Site in that month, the Variable Tipping Fee for Processing & Disposal shall not be paid in that month, irrespective of the KPIs.

Table 19.2 (a) KPIs for Secondary Transportation and their Weightage in Tranche 2 Payments

Sr.	KPI	Definition	Reason for inclusion	Level of measurement	Performance Indicator	Benchmark / Target	% Weightage	Penalty calculation method
Secondary Transport Vehicles								
1	**Availability of Vehicles**	All vehicles available (must have GPS/RFID technology in operational condition to be counted)	Reduces fleet downtime and maximizes asset utilization	Avg of all vehicles	Avg. (No. of days that each vehicle has downtime in a month)	<5%	25%	<Benchmark % = Nil >Benchmark % = (Performance %– Benchmark%)* VTP1 for that month*KPI weightage
Transportation								
2	**Assured qty transported to existing commitments**	Assured waste to be delivered to existing commitments	Ensure existing commitments are met	Project Level	Amount of waste transported to existing plants as a % of assured quantity across plants in a month	>95%	20%	>Benchmark % = Nil <Benchmark % = (Benchmark% - Performance %) *VTP1 for that month*KPI weightage
3	**Transportation done from DWCCs**	Amount of waste accumulated at DWCCs	Ensure regular visits from DWCCs	Project Level	% DWCCs in the Package with >2 Ton waste accumulated in the DWCC for more than three days	<5%	10%	<Benchmark % = Nil >Benchmark % = (Performance %– Benchmark%)* VTP1 for that month*KPI weightage

Table 19.2 (a) KPIs for Secondary Transportation and their Weightage in Tranche 2 Payments								
Sr.	**KPI**	**Definition**	**Reason for inclusion**	**Level of measurement**	**Performance Indicator**	**Benchmark / Target**	**% Weightage**	**Penalty calculation method**
Transfer Station								
4	**Throughput**	Waste transported from the Transfer Station as a % of Waste received	Ensure waste is not getting accumulated at the Transfer Station	Avg of all Transfer Stations	Avg across all Transfer Stations (Amount of waste transported out as a % of quantity received at the transfer station) on a monthly basis	>90%	20%	>Benchmark % = Nil <Benchmark % = (Benchmark% - Performance %) *VTP1 for that month*KPI weightage
5	**Availability**	No. of transfer stations operating as per designed capacity and able to accept and process waste	Ensure uptime of Transfer Stations	Project Level	% Transfer stations not operational for more than 1 week in a month	<5%	15%	<Benchmark % = Nil >Benchmark % = (Performance %– Benchmark%)* VTP1 for that month*KPI weightage
6	**Waste Segregation**	Segregated waste must not be mixed together and waste must not be segregated at the Transfer Station	Ensure source segregation is not reversed, and facility is clean	Project Level	No. of days of non-compliance	0	10%	= (No. of days of non-compliance)/30*VTP1 for that month*KPI weightage
							100%	

Table 19.2 (b) KPIs for Processing & Disposal and their Weightage in Tranche 2 Payments								
Sr.	**KPI**	**Definition**	**Reason for inclusion**	**Level of measurement**	**Performance Indicator**	**Benchmark / Target**	**% Weightage**	**Penalty Calculation method**
Plant Operations								
1	**Availability of Plant facilities**	% duration that the Facility is available to accept/process waste at or near design capacity.	Reduces plant downtime and maximizes asset utilization	Project level	Avg. (No. of days that each facility has downtime in a month)	<10%	15%	<Benchmark % = Nil >Benchmark % = (Performance %– Benchmark%)* VTP2 for that month*KPI weightage
2	**Extent of recovery**	Waste processed as a % of received waste	Ensures throughput of the facility is on track and waste is being processed	Project level	(Total waste input into processing facilities)/(Waste received) in the month	>95%	20%	>Benchmark % = Nil <Benchmark % = (Benchmark% - Performance %) *VTP1 for that month*KPI weightage
3	**Output efficiency**	Ratio of useful output (e.g., recyclables, RDF) to total input waste, per facility.	Tracks efficiency of waste-to-output conversion.	Facility level	Facility's useful output / total input waste in the month	>80% of the declared efficiency in the Operations Plan	20%	>Benchmark % = Nil <Benchmark % = (Benchmark% - Performance %) *VTP1 for that month*KPI weightage Performance to be calculated to a weighted avg basis across facilities basis their capacity
Landfill								
4	**Waste landfilled**	% of total input waste that is sent to landfill (i.e.,	Encourages minimum waste to landfill and	Project level	% waste landfilled / total input waste in the month	<20% of incoming waste every month	20%	<Benchmark % = Nil

Table 19.2 (b) KPIs for Processing & Disposal and their Weightage in Tranche 2 Payments								
Sr.	**KPI**	**Definition**	**Reason for inclusion**	**Level of measurement**	**Performance Indicator**	**Benchmark / Target**	**% Weightage**	**Penalty Calculation method**
		recovered, reused, or converted).	maximizes value recovery.					>Benchmark % = (Performance %– Benchmark%)* VTP2 for that month*KPI weightage
5	**Quality of disposed waste**	Compliance of reject material with environmental standards (non-combustible, inert, safe).	Ensures safe landfill practices and avoids pollution.	Project level	% Carbon content in the landfill samples collected and analyzed in the month	Combustible matter must be <3% in total residual inert matter every month	10%	= Percent of sample in this range* E*VTP2 for that month*KPI weightage E = 1.5 for upto 5% deviation, 2 for more than 5% deviation
Environment and safety								
6	**Liquid Discharge**	Liquid discharge from facility	Prevents contamination of local water bodies and utilization of LTP	Project level	# of instance of liquid discharged from the facility	Zero Liquid Discharge (ZLD) is mandatory	10%	= 1L/day for first instance of a month - 2L/day for second, 5L/day for third Threshold: VTP2 for that month*KPI weightage (if passed, double amount)
7	**Environmental Compliance**	Emissions from the facility must comply with pollution control norms.	Ensures environmental compliance and minimizes air pollution.	Project level	Deviation from Environmental Monitoring Parameters	0%	5%	= INR 5L per instance Threshold:VTP2 of that month*KPI weightage (if passed, double amount)
							100%	

ARTICLE 20 : ESCROW ACCOUNT

20.1. Escrow Account

20.1.1 The Authority shall, prior to the Compliance Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with the terms and conditions of this Agreement and the Escrow Agreement;

20.1.2 The nature and scope of the Escrow Account as fully described in the Agreement to be entered into amongst the Concessionaire, the Authority the Escrow Bank and the Senior Lenders (if any) through the Lenders‟ Representative, shall be substantially in the form set forth in **Schedule 17** (the "**Escrow Agreement**")

20.2. Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- All funds constituting the financial package disbursed by Lenders in terms of the Financing Agreements;
- Proceeds of any rentals, deposits, capital receipts or insurance claims; and;
- All payments by the AUTHORITY and the State Government, after deduction of any outstanding payments

The Authority shall at all times and in any month of the Concession Period, ensure that in the Reserve Sub-Account ("Reserve Fund") under the Escrow Account, an amount equivalent to next [90 (ninety] days payable to Concessionaire, in accordance with terms hereof, is deposited and maintained. The Parties agree that so long as the Concessionaire performs its obligations hereunder and the Authority does not notify the Escrow Bank in respect of any non-performance or breach of obligation by Concessionaire directing Escrow Bank to stop any appropriation from Reserve Fund; in case of any delay by the Authority in payment of due and undisputed amount to Concessionaire subject to and in accordance with terms hereof; the Concessionaire shall be entitled to tap the Reserve Fund to withdraw the amount due, which would be deposited and applied as per the application order agreed herein. In case of such tapping, the Authority shall forthwith top up and maintain the required reserve in the Reserve Fund.

20.3. Withdrawals during Concession Period

20.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions by way of an Escrow Agreement, to the Escrow Bank instructing, inter-alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out there from in the month when due:

- All taxes due and payable by the Concessionaire for and in respect of the Project;
- All payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- O&M Expenses, subject to the ceiling, if any, setforth in the Financing Agreements;
- O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- Any amounts due and payable to the Authority;
- Monthly proportionate provision of Debt Service due in a Financial Year;
- All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- Monthly proportionate provision of Debt Service payments due in a Financial Year in respect of Subordinated Debt;
- Any reserve requirements set forth in the Financing Agreements; and
- Balance, if any, in accordance with the instructions of the Concessionaire.

20.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Article 20.3.1 above, except with the prior written approval of the Authority.

20.3.3 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages directly from the Escrow Account, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority. Any demand from the Authority stating that a specified amount is payable shall be final, binding and conclusive on the Concessionaire and Escrow Bank and Escrow Bank shall pay and

Concessionaire shall cause the Escrow Bank to pay such amount without any demur, delay, cavil or protest on receiving a demand for such costs and Damages.

20.4. Withdrawals upon Termination

20.1.1 Not with standing anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

(a) All taxes due and payable by the Concessionaire for and in respect of the Project;

(b) percentage of Debt Due excluding Subordinated Debt if required to be as per the terms of this Agreement;

(c) Outstanding payments due to the Authority;

(d) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire.

(e) Retention and payments relating to the liability for defects and deficiencies

(f) outstanding Debt Service including the balance of Debt Due;

(g) outstanding Subordinated Debt;

(h) Incurred or accrued O&M Expenses;

(i) Any other payments required to be made under this Agreement; and

(j) Balance, if any, in accordance with the instructions of the Concessionaire

Provided that no appropriations shall be made under Sub-Article (g) of this Article 20.4.1 until a vesting certificate has been issued by the Authority.

20.4.1 The provisions of this Article 20 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 20.4.1 have been fully discharged.

ARTICLE 21 : FORCE MAJEURE

21.1. Force Majeure Events

21.1.1 A Force Majeure Event means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof occurring after the date of this Agreement, which is/are:

- beyond the reasonable control of the Affected Party;
- such that the Affected Party is unable to overcome or prevent despite exercise of due care and diligence;
- which does/do not result from the negligence of such Affected Party or the failure of such Affected Party to perform its obligations hereunder; and
- such that it/they has/have a Material Adverse Effect.

21.1.1 A Force Majeure Event means the following events and circumstances to the extent that they satisfy the conditions set out in Article 21.1.1:

a) Non-Political Event: A Non-Political Event shall mean one or more of the following acts or events: Act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site); fire or explosion caused by reasons not attributable to the Concessionaire or any Concessionaire Related Parties; chemical or radioactive contamination or ionizing radiation; epidemic, plague or quarantine; The discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or accidents of navigation, air crash, shipwreck, train wreck or other similar failures of transportation of equipment and/or material necessary for construction or O&M of the Facilities. Strikes or boycotts (other than those involving contractors, or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 7 (seven) days and an aggregate period exceeding 14 (fourteen) days in an Accounting Year, and not

being an Indirect Political Event set forth in Clause 21.1.2 (b); Any failure or delay of a Contractor but only to the extent caused by another Non- Political Event and which does not result in any offsetting compensation being payable to Concessionaire, by, or on behalf of such Contractor; Any judgment or order of any court competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority, or (v) breach of its obligations by the Contractor under its sub-contracts Non-Political Force Majeure Event shall not include the following conditions, except to the extent resulting from a Non-Political Force Majeure Event heavy rainfall; unavailability, late delivery or changes in cost of plant, machinery equipment, materials or spare parts required for undertaking the Project; a delay in the performance of any Subcontractor; non-performance resulting from normal wear and tear; or

- non-performance caused by the non-performing Party's (I) negligent or intentional acts, errors or omissions, (II) failure to comply with the Applicable Laws or Applicable Permits, or (III) breach of, or default under, this Agreement, as the case may be.

b) Indirect Political Event An indirect Political Event shall mean one or more of the following acts or events: Hostilities (whether declared as war or not), riot, civil disturbance, revolution, rebellion, insurrection, act of terrorism, in each case involving the GoI or the Government of Karnataka or occurring in Karnataka; invasion, armed conflict, coup d'état, act of foreign enemy, blockade, embargo, revolution, insurgency, nuclear blast/explosion, politically motivated sabotage, religious strife or civil commotion, in each case involving the GoI or the Government of Karnataka or occurring in Karnataka; strikes or boycotts (including non-political strikes other than those involving the Concessionaire, Sub-Contractors or their respective employees/representatives, or attributable to any act or omission of any of them and the indirect political strikes such as industry-wide or state-wide strikes), lockout, or other industrial disputes which are not

directly attributable to the actions of the Affected Party; any orders issued by the relevant Government Authority, which require the Concessionaire to suspend the construction or O&M of the Facilities provided that, such orders are not attributable to the Concessionaire's breach or violation of any Applicable Laws or Applicable Permits; and delay or failure by relevant Government Authorities in renewing or granting any Applicable Permit, despite the Concessionaire having applied for such Applicable Permit expeditiously and complied with the requirements of Applicable Laws in making such application or the unlawful revocation of any Applicable Permit. An act of war (whether declared or undeclared), invasion, armed conflict or act foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage; Industry-wide or State-wide strikes or industrial action for a continuous period of 7 (seven) days and exceeding an aggregate period of 14 (fourteen) days in an accounting Year; Any civil commotion, boycott or political agitation which prevents delivery of MSW at the Project Site by Concessionaire for an aggregate period exceeding 7 (seven) days in an accounting Year; Any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to Concessionaire by or on behalf of such Contractor; and Any Indirect Political Event that causes a Non-Political Event; Any event or circumstances of a nature analogous to any of the foregoing.

c) Direct Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Authority Instrumentality:

- occurrence of a Fundamental Change in Law in accordance with Article 23;
- Compulsory acquisition in national interest or expropriation of any Project Assets or rights of Concessionaire or of the Contractors;
- any order, notification or judgment issued or passed by any Government Authority/ Court of Law/ Tribunal which restricts the Concessionaire from constructing or operating the Facilities as contemplated in this Agreement on the Site, unless such restriction is, in any manner, attributable to the Concessionaire.

- Unlawful or unauthorized or without jurisdiction revocation of or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from Concessionaire or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- Any failure or delay of a Concessionaire but only to the extent caused by another Political Event;
- Any event or circumstance of a nature analogous to any of the foregoing.

d) Without prejudice to the provisions above,

- any act, event or circumstance which primarily affects any of the Concessionaire Related Parties associated with the Project shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the Concessionaire, it would have come within the definition of Force Majeure Event under this Article 20.1; and
- any act, event or circumstance which primarily affects any of the Authority Related Parties shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the Authority, it would have come within the definition of Force Majeure Event under this Article 20.1.

e) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 27, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Affected Party.

21.2. Notice of Force Majeure Events

21.2.1 The Affected Party shall give notice to the other Party in writing of the occurrence of any Force Majeure Event (the "FM Notice"), as soon as the same arises or as soon as reasonably practicable and in any event within 3 (three) days after the Affected Party knew of its occurrence, the adverse effect it has or is likely to have on the performance of its obligations under this Agreement, the actions being taken and an estimate of the time period required to overcome the Force Majeure Event and/or its nature and effects (if it is possible to estimate the same).

21.2.2 If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.

21.2.3 Any party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Article 21.2.

21.3. Excuse of Performance[1]

21.3.1 If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that;

- The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- The Affected Party shall make all reasonable efforts to mitigate or limit damage to the other party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

If a Force Majeure Event affects only one Project Facility, and not the other Project Facilities, then the Affected Party shall only be excused from the performance of its obligations in relation to the affected Project Facilities.

1 NOTE: The Parties may mutually agree to engage an in dependent expert to evaluate the occurrence and effect, etc., of the Force Majeure Event.

21.4. No Liability for Other Losses

Save and except as expressly provided in this Agreement, no Party shall be liable in any manner whatsoever to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this Article 21.

21.5. Resumption of Performance

The Affected Party shall in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of a Force Majeure Event on the performance

of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify the other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

21.6. Allocation of costs arising out of Force Majeure

21.6.1 Upon occurrence of any Force Majeure Event prior to the COD, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

21.6.2 Upon occurrence of a Force Majeure Event after the COD, the costs incurred and attributable to such event and directly relating to the Project the; "Force Majeure Costs") shall be allocated and paid as follows:

- Upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
- Upon occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the insurance cover for such Indirect Political Event, shall be borne by Concessionaire, and to the extent Force Majeure costs exceed such insurance cover, one half of such excess amount shall be reimbursed by the Authority to Concessionaire; and
- Upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the Authority to Concessionaire.
- For the avoidance of doubt, Force Majeure costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Tipping Fee revenues or debt repayment obligations, and for determining such costs, information contained in the Financing Documents may be relied upon to the extent that such information irrelevant.
- Save and except as expressly provided in this Article 21, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure event or exercise of any right pursuant hereto

21.7. Termination due to Force Majeure Event

21.7.1 Termination due to Non-Political Force Majeure Event

If within a continuous period of [365 (three hundred and sixty five)] days, a Non-Political Force Majeure Event continues for a period of [180 (one hundred and eighty)] days or more, after the notification of a Non-Political Force Majeure Event or any extended period agreed in pursuance of Article 21.3, any Party shall, after the expiry of the period of [180 (one hundred and eighty)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

Notwithstanding anything contained in this Article 21.7:

- if the Project Facilities are affected by a Total Casualty, then the Concessionaire may terminate this Agreement without having to wait for the expiry of the period of [180 (one hundred and eighty)] days stipulated for a Non-Political Force Majeure Event;
- if the Project Facilities are affected by a Minor Casualty, then the Concessionaire shall be required to repair and restore the Project Facilities to the same condition as previously existed and the Concessionaire shall not be entitled to terminate this Agreement on the grounds of a continuing Non- Political Force Majeure Event.

21.7.2 Termination due to an Indirect Political Force Majeure Event

If within a continuous period of [365 (three hundred and sixty five)] days, an Indirect Political Force Majeure Event continues for a period of [180 (one hundred and eighty)] days or more, after the notification of an Indirect Political Force Majeure Event or any extended period agreed in pursuance of Article 21.3, any Party shall, after the expiry of the period of [180 (one hundred and eighty)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

21.7.3 Termination due to a Direct Political Force Majeure Event

- If within a continuous period of [365 (three hundred and sixty five)] days, an Direct Political Force Majeure Event continues for a period of [180 (one hundred and eighty)] days or more, after the notification of a Direct Political Force Majeure Event or any extended period agreed in pursuance of Article 21.3, any Party shall, after the expiry of the period of [180 (one hundred and eighty)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.
- All the other consequences of termination that are set out at Article 24 shall apply in case of termination of this Agreement due to a Force Majeure Event

21.8. Dispute Resolution for Force Majeure Event.

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

ARTICLE 22: SUSPENSION OF CONCESSIONAIRE'S RIGHTS

22.1. Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Event of Default, Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to receive Payments under **Article 20**, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension"**). Suspension hereunder shall be effective forthwith upon issue of notice by Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lender's Representative, Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding [90 (ninety)] days.

22.2. Authority to act on behalf of Concessionaire

22.2.1 During the period of Suspension, the Authority shall be entitled to encash the Operation Performance Security for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses.

22.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorised by it under Clause 30.2 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its

obligations under the Agreement.

22.3. Revocation of Suspension

22.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

22.3.2 Upon the Concessionaire having cured the Concessionaire Event of Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

22.4. Substitution of Concessionaire:

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice there under from the Lender's Representative, Authority shall withhold Termination for a period not exceeding [180 (one hundred and eighty)] days from the date of Suspension, and any extension thereof due to Concessionaire default, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

22.5. Termination

22.5.1 At any time during the period of Suspension under this Article 22, the Concessionaire may by notice require Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement, Authority shall, within [15 (fifteen)] days of receipt of such notice, terminate this Agreement under and in accordance with Article 22.

22.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within [180 (one hundred and eighty)] days from the

date of Suspension hereunder or within the extended period, if any, the Concession Agreement shall, upon expiry of aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by Authority upon occurrence of a Concessionaire Default.

ARTICLE 23 : CHANGE IN LAW

23.1. Changes in-law

The Concessionaire may claim the benefit of and/or relief for a Change in Law event subject to and in accordance with this Article 23.

23.2. Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds **0.5% of the Estimated Capital Cost of the Project** in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 35.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

23.3. Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which 0.5% of the Estimated Capital Cost of the Project in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same

financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 35.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

23.4. Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 35 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than two years from the close of such Accounting Year.

ARTICLE 24 : EVENTS OF DEFAULT AND TERMINATION

24.1. Events of Default

Event of Default shall mean either Concessionaire Event of Default or the Authority Event of Default or both as the context may admit or require.

24.2. Concessionaire Event of Default:

24.2.1 In addition to any events specified elsewhere in this Agreement, events arising out of any acts or omissions of the Concessionaire and which have not occurred solely as a consequence of a Authority Event of Default, a Qualifying Change in Law, a Fundamental Change in Law or any other Force Majeure Event, and where the Concessionaire has failed to remedy the defects within any specified time period (to the extent any time period is provided), any of the following events shall constitute an Event of Default by the Concessionaire (the "Concessionaire Event of Default"):

a) failure of the Concessionaire to complete the construction of a Project Facility by the expiry of the Grace Period;

b) failure of the Concessionaire to pay the Delay Liquidated Damages within the timelines specified in this Agreement;

c) failure of the Concessionaire to achieve successful completion of Trial Operations of Project Facilities;

d) failure of the Concessionaire to remedy any reduction in Availability within [3 (three)] days of receipt of a notice from the Authority in accordance with Article 19;

e) failure of the Concessionaire to build and/or operate the Project in compliance with the KPIs and Technical Specifications;

f) for any Project Facility, failure of the Concessionaire to achieve the KPIs for [2 (two)] consecutive days, [32 (thirty two)] times in a continuous [12 (twelve)] month period;

g) suspension of the construction of a Project Facility pursuant to Article 22 (to the extent such Emergency is attributable to the Concessionaire) for a continuous period of 60 (sixty) days;

h) a breach by the Concessionaire of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct and/or operate and maintain the Project Facilities and such breach, if capable of being remedied, is not remedied within [30 (thirty)] days of issuance of written notice from the Authority

specifying such breach and requiring the Concessionaire to remedy the same;

i) any representation made or warranties given by the Concessionaire under this Agreement being found to be false or misleading in any material respect;

j) failure of the Concessionaire to submit and maintain a valid Performance Securities and O&M Securities in accordance with Article 9;

k) -deleted-

l) breach by the Concessionaire of its obligations set forth in this Agreement;

m) failure of the Concessionaire to obtain, renew and maintain any Concessionaire Applicable Permits;

n) failure of the Concessionaire to comply with any Applicable Law (including specifically the EPA);

o) failure of the Concessionaire to obtain and maintain insurance cover in accordance with Article 28;

p) failure of the Concessionaire or the Sub-Contractors to comply with the ESHS Documents in accordance with Article 14;

q) the breach of the Concessionaire's obligations under or the occurrence of an Event of Default or analogous event under the Financing Agreements or the Escrow Agreement, or termination of the Financing Agreements, or the Escrow Agreement (for reasons attributable to the Concessionaire).

r) abandonment of the Project by the Concessionaire;

s) the Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;

t) a resolution for insolvency of the Concessionaire is passed, or any petition for insolvency of the Concessionaire is initiated before a court (including tribunal) of competent jurisdiction in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 and such application has not been withdrawn within 14 (fourteen) days of the date thereof;

u) if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;

v) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court (including tribunal) of competent jurisdiction in accordance with the provisions of Insolvency and Bankruptcy Code,

2016 or Companies Act, 1956/ Companies Act, 2013 and a liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the agreements in relation thereto; and provided that:

- the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the agreements in relation thereto; and
- the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the agreements in relation thereto and has a credit worthiness at least as good as that of the Concessionaire as at the Effective Date.

24.3. Authority Event of Default

24.3.1 Any of the following events shall constitute an event of default by Authority (the "Authority Event of Default"), when not caused by a Concessionaire Event of Default or Force Majeure Event:

a) Authority has failed to make any payments due to the Concessionaire and more than 120 (one twenty) days have elapsed since such default;

b) Authority or the Department or the Independent Engineer is in Material Breach of any of its obligations under this Agreement and have failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Concessionaire;

c) Authority has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;

d) Authority has unreasonably withheld or delayed grant of any approval or permission within its respective jurisdictions and such delay and withholding is not attributable to Concessionaire or Force Majeure which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;

e) Any representations made or warranties given by the Authority under this Agreement have been found to be false or misleading.

24.4. Termination due to Event of Default

24.4.1 Termination for Concessionaire Event of Default:

a) Without prejudice to any other right or remedy which Authority may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, Authority shall, be entitled to terminate this Agreement in the manner as set out under Article 24.4.1(b) and Article 24.4.1(c).

b) Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Article 24.2, Authority may terminate this Agreement by issue of Termination Notice in the manner set out under Article 24.4.3 after giving the Concessionaire an opportunity of hearing.

c) If Authority decides to terminate this Agreement pursuant to preceding Article 24.4.1(a), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 (thirty) days of receipt of the Preliminary Notice, the Concessionaire shall submit to Authority in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "Concessionaire's Proposal to Rectify").

d) In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 (thirty) days, the Authority shall be entitled to terminate this Agreement by issuing Termination Notice, and the Performance Security of the Concessionaire shall get forfeited.

e) If the Concessionaire's Proposal to rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of 30 (thirty) days to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/cure the underlying event of default within such further period allowed, the Authority shall be entitled to terminate this Agreement, by issue of Termination Notice and the Performance Security of the Concessionaire shall get forfeited.

24.4.2 Termination for Authority Event of Default

a) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of Authority Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice;

b) If the Concessionaire decides to terminate this Agreement pursuant to preceding Article 24.4.2(a) it shall in the first instance issue Preliminary Notice to Authority, as the case may be. Within 30 (thirty) days of receipt of Preliminary Notice, Authority , as the case may be, shall forward to the Concessionaire its proposal to remedy/ cure the underlying

Event of Default (the " Authority Proposal to Rectify"). In case of non-submission of Proposal to rectify by Authority, as the case may be, within the period stipulated therefore, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice;

c) If Authority Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefore, Authority, as the case may be, shall have further period of 30 (thirty) days to remedy/ cure the underlying Event of Default. If, however, Authority, as the case may be, fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

24.4.3 **Termination Notice**

If a Party become entitled to do so decide to terminate this Agreement pursuant to the preceding sub article 24.4.1 or 24.4.2, it shall issue Termination Notice setting out:

a) In sufficient detail the underlying Event of Default;

b) The Termination Date which shall be a date occurring not earlier than 90 days from the date of Termination Notice;

c) The estimated termination payment including the details of computation thereof and,

d) Any other relevant information.

The Parties hereby agree that any Termination Notice shall also be sent to all Senior Lenders, Obligation of Parties.

24.4.4 **Obligation of Parties**

Following issue of Termination Notice by either Party, the Parties shall, subject to the provision of the Financing Documents and the rights of the Senior Lenders provided therein, promptly take all such steps as may be necessary or required to ensure that:

a) until Termination is final the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project;

b) the Termination Payment, if any, payable by Authority in accordance with the Article 24.4.5 is paid to the Concessionaire within 30 (thirty) days of the Termination Date; and

a) the Project is handed over to Authority by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to Authority .

24.4.5 **Termination Payment for Authority Event of Default**

Upon Termination of this Agreement on account of Authority Event of Default, the Concessionaire shall be entitled to receive back the Performance Security and also receive an amount as per Article 25 as Termination Payment.

24.4.6 **Withdrawal of Termination Notice:**

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same. Provided that the Party in breach shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

24.4.7 **Termination Payment for Concessionaire Event of Default**

- Termination Payment for Concessionaire Event of Default • Upon Termination of this Agreement on account of Concessionaire Event of Default before COD, Termination Payment shall be made to the Concessionaire as per Article 25, and the Authority shall be entitled to forfeit the Performance Security of the Concessionaire;

- Upon Termination of this Agreement on account of Concessionaire Event of Default after COD, the Authority shall be entitled to forfeit the Performance Security of the Concessionaire and pay Termination Payment to the Concessionaire as per Artidle 25.Upon Termination of this Agreement on account of Concessionaire Event of Default after COD, the Authority shall be entitled to forfeit the Performance Security of the Concessionaire and pay Termination Payment to the Concessionaire as per Article 25.

24.4.5 **Upon termination of this Agreement**

- The Concessionaire shall cease all work in relation to construction of the Project Facilities.
- The Concessionaire shall cease all work in relation to O&M of the Project Facilities.

- The Concessionaire shall take all necessary steps to safeguard and protect the Project Facilities (at whatever stage of completion or operation) and all other equipment, materials and goods on the Sites.
- The Concessionaire shall hand over the Sites and the immovable assets, to Authority or its nominee, to the extent applicable, as per Articles 24.4.9, 23.4.10, and 24.4.11.
- In case of termination of this Agreement due to an Authority Event of Default Authority shall return the Performance Securities, the O&M Securities if not already returned to the Concessionaire, after adjusting any outstanding payments owed by the Concessionaire, within 30 (thirty) days from the Transfer Date.
- The Concessionaire agrees that on the service of a Termination Notice or 180 (one hundred and eighty) days prior to the expiry of the Concession Period by efflux of time, it shall conduct or cause to be conducted by the Independent Engineer/ Authority , a survey (the "**Condition Survey**") and inspection of the Project to ascertain the condition thereof, verify compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project;
- If, as a result of the Condition Survey, Authority, and the Independent Engineer shall observe/notice that the Project or any part thereof is not in the condition required thereof under this Agreement (except normal wear and tear) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in the requisite conditions well before the Termination Date.

24.4.6 **Transfer of the Sites and the Project Facilities**

Upon the expiry or early termination of this Agreement, the Concessionaire shall hand over the Sites, the immovable assets such as Processing & Disposal Facility, Material Recovery Facility, decentralized units, etc., to Authority any other entity nominated by Authority in accordance with this Article 24 on a date mutually decided by Authority and the Concessionaire (the "**Transfer Date**"). For the avoidance of doubt, it is clarified that, in case of natural expiry of the Agreement, the Project Site shall be transferred to the Authority after 30 years from COD, and the part of the Sites on which the Landfill Site has been created shall be transferred to the Authority after 45 years from the COD after due post-closure activities are done by the Concessionaire.

24.4.7 **Inspection of the Sites and the Project Facilities**

- No later than 30 (thirty) days from the end of the 29th (twenty nineth) year of the Construction and Processing & Disposal period or 30 (thirty) days from the date of termination of the Agreement, as the case may be, Authority shall or shall cause the

Independent Engineer to carry out a condition survey of the Sites and the Project Facilities to assess whether they have been maintained by the Concessionaire in accordance with its obligations under this Agreement, and are in working condition in line with the design life of the Project Facilities.

- Authority shall notify the Concessionaire at least 7 (seven) days prior to the date on which it wishes to carry out the survey of the Sites and the Project Facilities.
- If the survey carried out by Authority or the Independent Engineer shows that the Concessionaire has not or is not complying with its obligations under this Agreement, then Authority shall notify the Concessionaire of the rectification and/or maintenance work which is required to ensure that the condition of the Sites and the Project Facilities is restored to the Hand-back Conditions.
- The Concessionaire shall carry out such rectification and/or maintenance work to achieve the Hand-back Conditions within 30 (thirty) days from the receipt of a notice from Authority in accordance with Article 24.4.10(c) above, at its own cost and risk. Upon completion of the rectification and/or maintenance work, the Concessionaire shall request Authority to carry out a final survey and inspection of the Sites and the Project Facilities. Authority shall carry out the final survey within 7 (seven) days of receipt of a notice from the Concessionaire pursuant to this Article 24.4.10(d). [At the discretion of Authority, the Concessionaire may be allowed extension of the period of [15 (fifteen)] days to rectify the defects notified by Authority or Independent Engineer if and to the extent that the Project Facilities cannot be used for the purposes for which they are intended after handing over by reason of a defect or damage attributable to the Concessionaire.]
- If Authority is satisfied with the results of the final survey, then Authority shall notify the Concessionaire within 7 (seven) days of carrying out the final survey that the Sites and the Project Facilities, comply with the Hand-back Conditions. If Authority not satisfied with the results of the final survey, then Authority shall or shall cause the Independent Engineer to estimate the cost of restoring the Sites and the Project Facilities to the Hand-back Conditions and recover such cost from the Concessionaire. The final decision of the compensation lies with the apex authority of Authority. The Concessionaire is binding upon the decision of the Authority.

24.4.8 **Hand-back Requirements**

On the expiry or early termination of this Agreement, the Concessionaire shall, at its own cost:

- hand over to Authority or any entity nominated by Authority , the Sites and the Project Facilities;

- to the extent that such rights and interests are not already vested in Authority , transfer all its rights and interest in the immovable assets comprising in the Project Facilities and execute such deeds and documents as may be necessary for this purpose and complete all related legal or other formalities;
- hand over all records and documents relating to the Sites and the Project Facilities including as-built records, Designs and Drawings, online monitoring and metering data, operating logs, manuals, reports, plans and records;
- transfer to Authority or its nominee (free of cost) the license to use the Proposed Technology and other know-how relating to the Project Facilities;
- transfer or cause to be transferred to Authority or its nominee any Sub-Contract that Authority or its nominee has chosen to take over and terminate all other sub-Concessions;
- transfer to Authority or its nominee all Concessionaire Applicable Permits which Authority or its nominee may require, and which can be legally transferred;
- remove from the Sites all employees and workmen, and movable assets, equipment and materials that are not required to be taken over by Authority or its nominee; and
- cooperate with and assist Authority with the Project post the handing over.
- Upon the expiry or earlier termination of the Concession Period, failure to handover the same within a period of 7 (seven) days of the expiry or earlier termination of the Concession Period would make the Concessionaire liable for payment of penalty equivalent to 1% (one per cent) of the last annual Tipping Fee including Revenue Share per day up-to a maximum of 15 (fifteen) days, after which the Authority shall be entitled to enter upon and take possession of the Site including the Project on as-is-where-is basis.

24.4.9 **Consequences of termination due to a Force Majeure Event**

In case of termination of the Agreement due to a Force Majeure Event, the following consequences shall apply:

- the Concessionaire shall hand over the Sites and the immovable assets, to Authority on an "as is where is" basis and to the extent relevant;
- Authority shall be required to return the Performance Securities or the O&M Securities, as the case may be, after adjusting any outstanding payments owed by the Concessionaire, to the Concessionaire within 30 (thirty) days from the Transfer Date; and
- in case of termination due to an Indirect Political Force Majeure Event or a Direct

Political Force Majeure Event, Authority shall (or shall require the Independent Engineer) to assess the Cost of the construction work undertaken by the Concessionaire in relation to the Project Facilities as on the date of the Termination Notice and based on such assessment, pay the Termination Compensation in accordance with Article 24.

24.5. Rights of Authority on Termination

24.5.1 Upon Termination of this Agreement for any reason whatsoever, Authority shall upon making the Termination Payment, if any, to the Concessionaire, have the power and Authority to:

a) enter upon and take possession and control of the Sites, constructed Project Facilities and the immovable assets, forthwith;

b) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project including Project Facilities and the immovable assets;

24.5.2 Notwithstanding anything contained in this Agreement, Authority shall not, as consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handover of the Project Facilities by the Concessionaire to Authority shall be free from any such obligation/ fee/ penalties/taxes.

Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to Authority with the necessary particulars, and in the event of any delay, Authority shall pay interest at a rate equal to 3% (three per cent) above the State Bank of India Base Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that the Termination Payments shall become due and payable by Authority upon actual or constructive handover of the Sites, Project Facilities and immovable assets by the Concessionaire to Authority clear from all encumbrances, charges and liens whatsoever, unless expressly agreed by the Parties otherwise.

24.5.3 The Concessionaire expressly agrees that Termination Payment under this Article 25 shall constitute a full and final settlement of all claims of the Concessionaire on

account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, Concession or otherwise.

24.5.4 Authority and the Concessionaire hereby unconditionally acknowledge and agree that, without prejudice to their any other right or remedy, Authority shall be entitled to pay the Termination Payment [to the extent required] to the Lenders‟ Representative for procuring discharge/ release of the any charge/ hypothecation created by Concessionaire on the movable assets for securing payment of Debt Due; and for this purpose the Lender is entitled to receive from Authority, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due as aforesaid, the Lenders‟ Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement; and Concessionaire hereby irrevocably agree that such payment by the Authority shall be full and final settlement of proportionate claim of Termination Payment to the Concessionaire under this Agreement.

24.6. Accrued Rights and liabilities of Parties

- Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money as damages and other rights and remedies which it may have in law or Concession. All accrued rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.
- Nothing in Article 23 shall prevent or restrict a Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

ARTICLE 25 : TERMINATION COMPENSATION

25.1. Termination Compensation for Termination post the Compliance Date but prior to the Construction Completion Date

25.1.1 For the Authority Event of Default

If the Agreement is terminated prior to the Construction Completion Date for an Authority Event of Default, the Authority shall be liable to pay to the Concessionaire the aggregate of:

- Net Tipping Fee (after deduction of penalties) payable by Authority as on the date of the Termination Notice;
- Debt Due;
- 110%* of Adjusted Value of the equity on Termination Date;

LESS

- any unadjusted Mobilization Advance (and interest if any);
- any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

25.1.2 For a Concessionaire Event of Default (in accordance with **Schedule 18**)

If the Agreement is terminated prior to the Construction Completion Date for a Concessionaire Event of Default, the Authority shall pay to the Concessionaire, the aggregate of:

- Net Tipping Fee (after deduction of penalties) payable by Authority as on the date of the Termination Notice;
- any unadjusted Mobilization Advance (and interest if any);
- any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

25.2. Termination Compensation for Termination post the Construction Completion Date but prior to the COD

25.2.1 For the Authority Event of Default

If the Agreement is terminated post the Construction Completion Date but prior to the COD for an the Authority Event of Default or BBMP Event of Default, the Authority or the BBMP shall be liable to pay to the Concessionaire the aggregate of:

- Net Tipping Fee (after deduction of penalties) payable by Authority ;
- Debt Due;
- Equity infused in the Concessionaire as on the date of Termination Notice along with interest on the Equity at the rate of the prevailing SBI MCLR + 3% (three per cent);
- 110%* of Adjusted Value of the equity on Termination Date

LESS

- any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

25.2.2 For a Concessionaire Event of Default (in accordance with **Schedule 18**)

If the Agreement is terminated post the Construction Completion Date but prior to the COD for a Concessionaire Event of Default, the Authority or the BBMP shall pay to the Concessionaire, the aggregate of:

- Net Tipping Fee (after deduction of penalties) payable by Authority if not already paid as on the date of the Termination Notice;
- 90% of the Debt due less Insurance Cover;

LESS

- any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

25.3. Termination Compensation for Termination post the COD

25.1.1 For the Authority Event of Default If the Agreement is terminated post the COD for an Authority Event of Default, the Authority shall be liable to pay to the Concessionaire the aggregate of:

- Net Tipping Fee (after deduction of penalties) payable by Authority that

remain outstanding on the date of the Termination Notice;

- Debt Due;
- 110%* of Adjusted Value of the equity on Termination Date

LESS

- any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

25.1.2 For a Concessionaire Event of Default (in accordance with **Schedule 18**)

If the Agreement is terminated post the COD for a Concessionaire Event of Default, the Authority shall pay to the Concessionaire, the aggregate of:

- Net Tipping Fee (after deduction of penalties) payable by Authority as on the date of the Termination Notice;
- 90% of the Debt due less Insurance Cover;

LESS

- any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

25.4. Termination Compensation for Termination due to a Force Majeure Event

25.4.1 Non-Political Force Majeure Event and Indirect Political Force Majeure

- If the Agreement is terminated due to an Indirect Political Force Majeure Event or Non-Political Force Majeure Event, prior to the COD:
  - Net Tipping Fee (after deduction of penalties) payable by Authority due to the Concessionaire as on the date of the Termination Notice under Article 21;
  - Debt Due;

LESS

  - any insurance proceeds received and retained by the Concessionaire
- If the Agreement is terminated due to an Indirect Political Force Majeure Event or Non-Political Force Majeure Event, post the COD, the Authority shall be liable to pay to the Concessionaire:
  - Net Tipping Fee (after deduction of penalties) payable by Authority as on the date of the Termination Notice in case of facilities under Article 21;
  - Debt Due;

LESS

- any insurance proceeds received and retained by the Concessionaire.

- Direct Political Force Majeure
  - If the Agreement is terminated due to a Direct Political Force Majeure Event, prior to the COD, the Authority or the BBMP shall be liable to pay to the Concessionaire:
    - Net Tipping Fee (after deduction of penalties) payable by Authority to the Concessionaire as on the date of the notice of termination under Article 21;
    - Debt Due;
    - Equity infused in the Concessionaire as on the date of the notice of termination under Article 20 along with interest on the Equity at the rate of the prevailing SBI MCLR + 3% (three per cent);

LESS

    - any unadjusted Advance and interest (if any);
    - any insurance proceeds received and retained by the Concessionaire; and
    - any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

- If the Agreement is terminated due to a Direct Political Force Majeure Event post the COD, BSWML or the BBMP shall be liable to pay to the Concessionaire:
  - Net Tipping Fee (after deduction of penalties) payable by Authority on the date of the notice of termination under Article 21;

LESS

  - any insurance proceeds received and retained by the Concessionaire; and
  - any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

25.5. All Termination Compensation required to be paid by *the BBMP or BSWML* to the Concessionaire shall be paid within 60 (sixty) days of transfer of the Sites and the

Project Facilities in accordance with Article 24.

25.6. Limitations on Termination Compensation

a) Termination Compensation, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Project Cost, in accordance with the provisions of this Agreement. For avoidance of doubt, it is agreed that within a period of [60 (sixty)] days from COD, the Concessionaire shall notify to BSWML (with a copy to the BBMP), the Project Cost and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Compensation, and it is further agreed that in the event such disaggregation is not notified to BSWML, the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements. The Parties also agree that, notwithstanding anything contained in this Agreement, for the purposes of computing Termination Compensation, the Debt Due shall at no time exceed [50% (fifty per cent)] of the Project Cost.

b) The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Compensation. Provided, however, that the provisions of this Article 25.6 (b) shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within [60 (sixty)] days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of the Project Cost and any borrowings in excess.

25.7. Full and Final Settlement

Notwithstanding anything to the contrary elsewhere in this Agreement, any Termination Compensation determined pursuant to this Article 25 shall, once paid, be in full and final settlement of any claim, demand and/or proceedings of the Concessionaire against BSWML or the BBMP, in relation to Termination of this Agreement and the Concessionaire shall be excluded from all other rights and remedies in respect of such Termination.

25.8. The provisions of this Article 25 shall survive the Termination of this Agreement.

ARTICLE 26 : SUBSTITUTION OF THE CONCESSIONAIRE

26.1. Substitution by Lenders' Representative

In the event of Concessionaire's default, BSWML shall, if there be any Lenders, send copy of the Termination Notice to the Lenders" Representative to inform and grant 15 (fifteen) days to the Lenders" Representative, for making representation on behalf of the Lenders stating the intention to substitute the Concessionaire. In case BSWML receives representation on behalf of the Lenders, within the aforesaid period, BSWML shall withhold the termination for period not exceeding 180 (one hundred and eighty) days, for enabling the Lenders" Representative to exercise the Lenders" right of substitution in accordance with the Substitution Agreement and substitute the Concessionaire with Nominated Company.

26.2. Substitution by BSWML

In the event that no company is nominated by the Lender's Representative to act as the Nominated Company, BSWML may either substitute the Concessionaire with its own Nominated Company in accordance with the Substitution Agreement or terminate the Agreement.

26.3. Substitution Process

While carrying out substitution, the Lender's Representative or BSWML, as the case may be, shall invite competitive bids from the prospective parties for acting as the Nominated Company and substituting the Concessionaire. Such Nominated Company shall have to agree to bear all the liabilities of the Concessionaire in terms of this Agreement and Financing Agreement.

26.4. Consequences of Substitution

BSWML shall grant, to the Nominated Company, the right to develop, design, finance, construct, operate and maintain the Project (including entering into Sub-Contracts) together with all other rights of the Concessionaire under this Agreement, subject to fulfillment of the Concessionaire's entire obligation under this Agreement by such Nominated Company, for the remainder of the term of this Agreement. Such rights shall be granted by BSWML through the novation of the Agreement, if applicable, in favour of the Nominated Company.

BSWML shall also execute new Substitution Agreement with the Nominated Company and the Lenders, if there be any. All Sub-Contracts and agreements in respect of the Project including Financing Agreements and all Sub-Contracts executed by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. Further all rights of the Concessionaire on the Sites and Project Assets in terms of the Agreement shall stand transferred and novated in favour of the Nominated Company. All approvals/ clearances of BSWML received by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. The Concessionaire shall get replaced by the Nominated Company for all purposes related to the Project.

ARTICLE 27 : DISPUTE RESOLUTION

27.1. Amicable Resolution

27.1.1 Save where expressly stated to the contrary in this agreement, any dispute, difference or controversy of whatever nature between the parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute') shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Clause (ii) below.

27.1.2 Either Party may require such Dispute to be referred to the MD of the Authority and the Chief Executive Officer of Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute.

27.1.3 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

27.1.4 If the Dispute is not amicably settled within 15 (fifteen) days of the Dispute Meeting, either Party may refer the Dispute to ACS, UDD for dispute resolution..

27.2. Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer, as the case may be, to mediate and assist the Parties in

arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, as the case may be, either Party may require such Dispute to be referred to the Arbitration & Conciliation Centre - Bengaluru (III Floor, East Wing, 'Khanija Bhavana', Race Course Road, Bengaluru-560 001, India) to mediate and assist the Parties in arriving at an amicable settlement.

If such meeting does not take place within 30 (thirty) days or the Dispute is not resolved as evidenced by the signing of written terms of settlement within [90 (ninety)] days of the notice in writing referred to in Article 27.1.1 or such longer period as may be mutually agreed by the Parties, either Party may approach the Court of Law in Bengaluru Jurisdiction.

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27.3. Arbitration

- [Deleted]

27.4. Performance during Dispute

Pending the submission of and/or decision on a Dispute; the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

27.5. Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory regulatory authority or commission with powers to adjudicate upon Disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, be adjudicated upon by such regulatory authority or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 28 : INSURANCE

28.1. Insurance

The Concessionaire shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, during the Concession Period all insurances in respect of the Project Facilities in accordance with the Good Industry Practices. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds to insurance. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Lenders‘ dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders‘ dues.

The following list may be considered:

- Builders’/Sub- Contractors’ all risk insurance;
- Erection insurance and/or break down insurance;
- Public liability insurance applicable for the Concession Period, Termination and post-Termination period;
- Statutory insurances such as workmen's compensation insurance or any other insurance required by the Applicable Laws;
- Comprehensive Third-Party liability insurance including injury or death to Persons who may enter the Sites;
- Insurance policies related to any of the Concessionaire's obligations hereunder;
- Any other insurance that may be considered necessary by Authority/ Lenders of the Concessionaire, if any, to protect the Concessionaire, its employees and its assets (against loss, damage or destruction at replacement value) or otherwise, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to(f).

28.2. Notice of the Authority

No later than 45 (forty-five) days prior to commencement of the Construction Period and the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the

insurances that it proposes to effect and maintain in accordance with this Article 27. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in theevent of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

28.3. Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Clause 28.3 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority. The Concessionaire shall maintain a register of entry in order of premiums paid towards Insurance of the Project Facilities. Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire. 180

28.4. Waiver of Subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 28 shall include a waiver of any and all right of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successor, underrating and their subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim orany other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered such policies of

insurance.

28.5. Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, inter alia, the Authority, and its assigns, undertaking, and their affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligations covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than Third Party liability insurance policies) or because of deductible Articles in or inadequacy of limits of any such polices of insurance.

28.6. Application of Insurance Proceeds

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by Concessionaire towards repair, renovation, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed. The Concessionaire shall designate the Authority as the beneficiary for the assets under ownership of the Authority as per Clause 27.1 and may designate the Lenders as the beneficiaries for the assets underthe Concessionaire ownership as per Clause 27.1 or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project. The Concessionaire shall carry such repair, renovation, restoration or re- instatement to the extent possible in such manner thatthe Project Facilities after such repair, renovation, restoration or re-instatement to the extent possible in the same condition as it were prior to such damage or destruction, normal wear and tear accepted.

28.7. No Breach of Insurance Obligation

If during the Concession Period, any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained/re-instated in respect of such risk, Concessionaire shall not be in breach of its obligations regarding insurance under this Agreement.

ARTICLE 29 : VARIATION – (Deleted)

ARTICLE 30 : INTELLECTUAL PROPERTY AND CONFIDENTIALITY

30.1. Proprietary Material

30.1.1 The property in all designs, drawings, processes, methods, details, plans, concepts, technology, specifications, schedules, programs, reports, calculations, documents and other works relating to the Project, including intellectual property rights therein or thereto, whether registered or not, which have been or are hereafter written, originated, made or generated by the Concessionaire or any of its employees, Sub-Contractors, consultants or agents in connection with this Agreement or the design, development, construction, O&M of the Project/Project Facilities/Project Assets, shall be and remain at all times the property of the Concessionaire, vest exclusively in the Concessionaire and ensure to the exclusive benefit of the Concessionaire (the "Proprietary Material").

30.1.2 The Concessionaire, as beneficial owner, hereby grants to BSWML a perpetual non-exclusive license to use such Proprietary Material in connection with the Project, irrevocably and free of cost. Such license shall carry the right to use the Proprietary Material for all purposes connected with the Project; however, it shall not be transferable to a Third Party. Such license shall automatically get extended to BSWML for Project purpose only, and not for Third Party use or transfer, upon the Termination of this Agreement or the discharge by the Concessionaire of its duties hereunder.

30.2. Confidentiality

30.2.1 The Independent Engineer/ Authority shall not at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose, transfer, communicate to any Person or use in any manner for any sss unconnected with the Project any Proprietary Material or other information, material, documents, records or data, concerning the Project, the Concessionaire and the Independent Engineer, the Authority, BSWML(including any information concerning the contents of this Agreement) except of its directors, officials, employees, Sub-Concessionaires, consultants, agents or representatives on a need to know basis or as may be required by any law, rule, regulation or any judicial process.

30.2.2 Authority shall use such Proprietary Material and information only for the purposes of this Agreement or as otherwise expressly permitted by the Concessionaire in writing.

30.2.3 The Concessionaire shall ensure that all its directors, employees, Sub-Concessionaires, consultants, agents or representatives execute, deliver and comply with customary confidentiality and non-disclosure agreements reasonably required by Authority, have been duly approved by Authority, with respect to the Project.

30.2.4 The aforesaid provisions shall not apply to the following information: -

- Obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality; or
- Already in the public domain otherwise than by breach of this Agreement;
- Disclosed due to a court order or under any Act of GoI/Authority of Karnataka or required by Applicable Laws.

30.3. Survival

The Concessionaire and BSWML accept and confirm that the provisions of this Article 30 shall survive the Termination of this Agreement.

ARTICLE 31 : ACCOUNTS AND AUDIT

31.1. The Concessionaire shall maintain full accounts of all revenues derived/collected by it from and on account of use of the Project, income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide to The Authority 2 (two) copies of the said accounts duly audited and certified by the Concessionaire's Statutory Auditors within 120 (one hundred twenty) days of the close of each Financial Year to which they pertain, during the subsistence of this Agreement. Such audited accounts shall form the basis of various payments by either Party under this Agreement. The Concessionaire shall also furnish, within one week of its publication, certified copies of the audited accounts and annual report published by

the Company under the Applicable Laws. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

31.2. The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors (the "Statutory Auditors") a firm of Chartered Accountants duly licensed to practice in India out of the mutually agreed list of [10 (ten)] independent and reputable firms of Chartered Accountants in India (the "List of Chartered Accountants"). Subject to 30 (thirty) days" notice to the Authority and the replacement Statutory Auditors being appointed from the List of Chartered Accountants, the Concessionaire may terminate the appointment of any Statutory Auditor appointed in accordance with this Article. The fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

31.3. On or before the 15th (fifteenth) day of April each year, the Concessionaire shall provide for the preceding Financial Year a statement duly audited by its Statutory Auditors giving summarized information, the revenues derived from the Project and such other information as the Authority may reasonably require.

31.4. Notwithstanding anything to the contrary contained in this Agreement, The Authority shall have the right but not the obligation to appoint at its cost another firm of Chartered Accountants from the List of Chartered Accountants (the "Additional Auditor") to audit and verify all those

matters, expense, costs, realizations and things which the Statutory Auditors of the Concessionaire, are required to do, undertake or certify pursuant to this Agreement.

31.5. In the event of there being any difference between the finding of the Additional Auditor, and the certification provided by the Statutory Auditors of the Concessionaire, such Auditors shall meet to resolve such differences and if they are unable to resolve the same such disputed certification shall be resolved by recourse to the Dispute resolution procedure.

ARTICLE 32 : MISCELLANEOUS

32.1. Assignment and Charges

32.1.1 Concessionaire shall not assign in favor of any person this Agreement, or the rights, benefits and obligations hereunder save and except with prior consent of both Authority. Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Facilities except with prior consent in writing of Authority.

32.1.2 Restraint set forth in Article 32.1.1. above shall not apply to:

• Liens/encumbrances arising by operation of law (or by an Agreement evidencing the same) in the ordinary course of business of Concessionaire.

• Pledges/ hypothecation of goods/ stocks/movable assets, Revenue and receivables as security for indebtedness, in favor of the Senior Lenders and working capital providers for the Project.

• Assignment of Concessionaire's rights and benefits under this Agreement to or in favors of the Senior Lenders as security for financial assistance provided by them. Provided, no charge/ mortgage/ lien/ hypothecation or encumbrance of any kind whatsoever can be created or construed as allowed to be created over the Project Assets including the Sites, assets and equipment provided by the Authority for the Project.

Provided further that irrespective of security hereinabove permitted, Concessionaire is irrevocably obligated to procure release of such security and hand over to the Authority, upon Termination of this Agreement, their respective Project Assets free of all Encumbrances whatsoever.

32.2. Interest and Right of Setoff : NOT APPLICABLE

32.3. Governing Law and Jurisdiction:

This agreement shall be governed by the laws of India. The Courts in the State of Karnataka shall have jurisdiction over all matters arising out of or relating to this Agreement.

32.4. Waiver

Waiver by either party of any default by the other party in the observation and performance of any provision of or obligation under this Agreement:

- Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligation under this agreement;
- Shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
- Shall not affect the validity or enforceability of this agreement in any manner.

Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/ breach of any terms, conditions or provisions of this Agreement.

32.5. Survival

- Termination of this agreement shall not relieve Authority of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and expect as otherwise provided in any provision of this agreement expressly limiting the liability of either party, shall not relieve either party of any obligations or liabilities for loss or damage to the other party arising out of or caused by acts or omissions of such party prior to the effectiveness of such termination or arising out of such termination.
- Termination shall:
    - not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
    - except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

All obligations surviving Termination shall only survive for a period of [3 (three) years] following the date of such Termination.

32.6. Amendments

This Agreement and the Schedules/ Annexures together constitute a complete and exclusive understanding of the terms of the Agreement between the parties on the subject hereof and no amendment or modification hereto shall be valid and effective

unless agreed to by all the parties hereto and evidenced in writing.

32.7. Notice

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this agreement and termination of this Agreement, shall be in writing and shall give by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below;

If to Authority

Managing Director /BSWML Bengaluru Solid Waste Management Limited

30/1, Thimmaiah Road, Millers Tank Bund Area, Vasanthnagar, Bengaluru-560 052

If to Bruhat Bengaluru Mahanagara Palike (BBMP)

The Chief Commissioner

Bruhat Bengaluru Mahanagara Palike (BBMP)

If to Concessionaire:

_____

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered:

- In the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address, and
- In the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

32.8. Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one

or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

32.9. No Partnership

Nothing contained in this agreement should be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

32.10. Language

All notice required to be given under this agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language and true translation into English language if other than English is used at user's costs and expenses.

32.11. Counterparts

This agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this agreement but shall together constitute one and only the Agreement.

32.12. Liability for Review

Except to the extent expressly provided in this Agreement:

- no review, comment, certification, verification or approval by BSWML or Authority, of any Project Agreement, design, detailed engineering, or document, accounts, invoice, etc., submitted by the Concessionaire nor any observation, testing, certification, validation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe, test or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Approvals; and
- the Authority, BSWML, their advisors or shall not be liable to the Concessionaire by reason of any review, comment, approval observation, testing, certification, verification, validation or inspection referred in Sub- Clause (a)above.

32.13. Unforeseen Event

Any event or condition that has not been explicitly covered under the provisions of this Agreement shall be resolved after discussion and mutual agreement between the Parties.

32.14. Liability and Indemnification

- The Concessionaire shall indemnify, defend and hold harmless (the "**Indemnifying Party**") The Authority (the "**Indemnified Parties**") during the Concession Period from and against all liabilities, damages, losses, expenses, claims, suits, proceedings, judgments, settlements, actions, costs of any nature whatsoever, whether directly or indirectly arising, for personal injury, for damage to or loss of any property and any Third Party liability, including reasonable attorneys' fees, actually incurred or suffered by the Indemnified Parties, arising out of or in any way connected with (i) any breach, negligence, default, omission, violation, infringement etc., as the case may be, by the Indemnifying Party or Persons claiming through or under it or due to such Party's representations and warranties herein; covenants, agreements or obligations contained herein or the terms and conditions hereof; any intellectual property right of any Person; (ii) failure of the Indemnifying Party or Persons claiming through or under it to comply with Applicable Laws or the Applicable Permits or to pay taxes or make contractual or other payments due and payable to any Person; (iii) the employment, sickness, injury or death of any Person employed directly or indirectly by the Indemnifying Party or Persons claiming through or under it ;or(iv) as provided elsewhere herein.

- The Concessionaire shall be responsible for executing, performing its obligations hereunder in accordance with the provisions of this Agreement at its risk and consequence and shall be responsible for any liability whatsoever arising under, in connection with or in relation to the discharge of obligations hereunder by the Concessionaire or Persons claiming through or under it and shall indemnify, keep indemnified and hold The Authority and its advisors harmless in this behalf.

- The Authority shall not be liable to the Concessionaire for any indirect, consequential, incidental, punitive or exemplary damages, loss of profit, consequential financial or economic loss or any disruption in the flow of Solid Waste into the Project for any reason whatsoever.

- The Concessionaire shall keep The Authority indemnified during the Concession Period against any claims, damages, liabilities, costs, penalties etc. (i) from or by any Authority BSWML, including the CPCB or the SPCB, and Third Parties for damages to the environment or any acts, omissions, defaults or negligence of the Concessionaire that

damages the environment; and (ii) resulting from accidents at work, occupational diseases and contingencies that may arise at or around the Sites or in the employment of labor and personnel at the Project. The Concessionaire shall remain liable for its acts or omissions in implementing the Project in accordance with the Technical Specifications and the Applicable Laws even after the Termination of this Agreement by efflux of time or otherwise.

- Except as expressly provided in this Agreement, the Concessionaire shall carry out and perform its rights and obligations under this Agreement and the Project Agreements at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the Project Agreements till the Termination Date.
- The provisions of this Article 32.14 shall survive the Termination of this Agreement.

32.15. Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- no review, comment or approval by BSWML or the Authority or the Independent Expert of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- The Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-Article (a) above.

32.16. Reservation of Rights

No forbearance, indulgence, relaxation or inaction by the Concessionaire at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of BSWML or the Authority to require performance of that provision, and no delay in exercising or omitting to exercise any right, power or remedy accruing to BSWML or the Authority upon any default or otherwise under this Agreement shall impair any such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of BSWML or the Authority in respect of any default or any acquiescence by it in any default, affect or impair any right, power or remedy of BSWML or the Authority in respect of any other default.

32.17. Third parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

32.18. Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

ARTICLE 33 : DEFINITIONS

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

Access Road	means a motorable approach road required to be built (if any) for providing access to the Site(s) to the Concessionaire;
Actual Project Cost	Shall mean the actual cost incurred on the construction of the Project Facilities as submitted by the successful bidder/Concessionaire in the Detail Project Report and authenticated by the Authority.
Additional Performance Security	means the performance security that must be submitted by the Selected Bidder to the Authority, together with the Performance Security and ESHS Performance Security to secure the obligations of the Concessionaire/Bidder in accordance with the requirements of this Agreement;
Adjusted Equity	means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **"Reference Date"**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI) applicable to 'All Commodities' announced by Government of India, and for any Reference Date occurring: **(a)** On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Compliance Date and the Reference Date; **(b)** From Commercial Operation Date (COD) and until the 5th (fifth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **"Base Adjusted Equity"**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; **(c)** After the 5th (fifth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.33% (zero point three three percent) thereof at the commencement of each month following the 5th (fifth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date; **(d)** For the avoidance of doubt, the Adjusted Equity shall, in the event of Concession Period, be computed as on the Reference Date immediately preceding the Concession Period Date; provided that no reduction in the Base Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;
Affected Party	shall mean the party claiming to be affected by a Force Majeure Event in accordance with Article 21
"Agreement" or "Concession	means this agreement between BSWML and Concessionaire, including its schedules, annexures and includes any amendments and hereto in

Agreement"	accordance with the provisions hereof.
"Applicant/Bidder"	The term Bidder (the "**Applicant/Bidder**") means a single entity or a group of entities (the "**Joint Venture**"/ "**Consortium**"), not more than three members (including lead member) as the case may be, coming together to implement the Project. However, no Bidder applying individually or as a member of a Joint Venture/Consortium, as the case may be, can be a member of another Joint Venture/Consortium. The term Bidder used herein would apply to both a single entity and a Joint Venture/Consortium.
Applicable Permits	Shall mean all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals, and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement.
Applicable Law	shall mean all laws, Acts, ordinances, rules, regulations, notification & guidelines in force and effect, including MSW Rules 2016, as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the period of subsistence of this agreement and applicable to the Project.
Authorized Representative	Means an individual or an authority to sign the bid and all associated documents
Arbitration Act	shall mean the Arbitration and conciliation Act, 1996 of India and shall include any amendment to or any re-enactment thereof as in force from time to time.
Associate	shall mean any company (ies) which is (are) controlled by the Concessionaire. For the purpose of this definition, the term "control' means the power to direct the management or policies of such entity, directly or indirectly, through the ownership of shares or other securities, by contract or otherwise, provided that the direct or indirect ownership of fifty one percent (51%) or more of its voting share capital is deemed to constitute control of such entity, and "controlled" shall be constructed accordingly.
Authority Event of Default	shall have the meaning assigned thereto in Article 24
Availability	means the availability of the Project Facilities to collect, transport process and dispose Solid Waste, as determined in accordance with Articles 19
Bank Rate	shall mean is the rate of interest as notified by Reserve bank of India (RBI) from time to time in pursuance of section 49 of the RBI act, 1934 or any replacement of such bank rate for the time being in effect.
Bid	shall mean the documents in their entirety comprised in the Bid submitted by the {selected Bidder/Consortium} in response to the Request for Proposal in accordance with the provisions mentioned thereof.
Bid Due Date	shall mean the last date of filing the Bid as notified by the authority.

Bid Security	Means a form of monetary guarantee the Authority requires from a bidder or tenderer to safeguard against the withdrawal of their bid before the end of the bid validity period, or their refusal to sign the contract, if selected.
Bio Gas	Biogas is produced naturally through a process of anaerobic decomposition from waste / bio-mass sources like agriculture residue, cattle dung, sugarcane press mud, municipal solid waste, sewage treatment plant waste, etc.
Bio Medical Waste	Biomedical waste or hospital waste or any kind of waste containing infectious (or potentially infectious) materials. It may also include waste associated with the generation of biomedical waste that visually appears to be of medical or laboratory origin (e.g. packaging, unused bandages, infusion kits etc.), as well research laboratory waste containing biomolecules or organisms that are mainly restricted from environmental release. Or Any waste, which is generated during the diagnosis, immunisation, treatment of human beings or animals, or in research activities pertaining thereto or in the production or testing of biologicals including the categories.
Bio Methanation	A process which entails enzymatic decomposition of the organic matter by microbial action to produce methane rich biogas.
Bio-medical waste treatment and disposal facility	The facility wherein treatment, disposal of bio-medical waste or processes incidental to such treatment and or disposal is carried out and includes in integrated waste processing facilities.
Book Value	shall mean the cost of the fixed assets incurred by the Concessionaire for the Project, net of accumulated depreciation computed on straight line basis in accordance with the rates specified in Companies Act, 1956 and as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties.
Bulk Waste Generators	Bulk Waste Generators Categorization as :- (a) Residential waste generators with more than 100 Multi Dwelling Units (MDUs) (b) Commercial and Institutional waste generators generating solid waste of more than 100 kgs per day or located on the premises with site area of more than 5000sqm, as per SWM Bye-Laws of BSWML
Change in Law	shall have the meaning ascribed thereto in Article 23 of DCA
C&T or Collection & Transportation	C&T or Collection & Transportation: refers to secondary collection & transportation up to processing site
C&D Waste	The waste comprising of building materials debris and rubble resulting from construction, re modelling, repair and demolition of any civil structure.
Concessionaire Event of Default	shall have the meaning assigned thereto in Article 24
Conditions Precedent	means conditions to be satisfied before commencement of the Project as specified in Article 4;
Central Pollution Control	The Central Pollution Control Board constituted under subsection (1) of Section 3 of the Water (Prevention and Control of Pollution) Act,

Board/CBCB	1974 (6 of 1974).
COD – C&T (Commercial operation Date)	[deleted]
COD – P&D (Commercial operation Date)	Shall mean the date on which the Facility is ready to commence the operations and maintenance and is duly certified by the Independent Expert/ Engineer. It shall not be later than 24 (Twenty-Four) months from the date of obtaining the CTE/ EC as applicable from the KPCB and the extended actual date on which Facility starts the operation.
Coercive Practice	means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract
Company	shall mean the special purpose Company set up by the Consortium or single entity which is the selected Bidder for the Project.
Composting	A controlled process involving microbial decomposition of organic matter.
Concession Period	Shall mean the period of 30 years from the COD of facility.
Concessionaire	Means the successful Bidder / Applicant Selected by the Authority.
Concessionaire's Representative	means the Person nominated by the Concessionaire, from time to time, to act on its behalf and liaise with the State Government and the Authority for the purposes of this Agreement and notified as such in writing to the State Government and the Authority.
Conditions Precedent	means collectively, the obligations of the Concessionaire that are set out at Article 4, the obligations of the State Government and the Authority that are set out at Article 6 and '**Condition Precedent**' means any one of these
Construction Requirements	shall mean collectively the waste processing facility construction requirements and the landfill facility construction requirements in line with minimum specifications given in Project Information Memorandum (PIM) of the RFP document.
Construction Requirements	shall mean collectively the waste processing facility construction requirements and the landfill facility construction requirements in line with minimum specifications given in Project Information Memorandum (PIM) of the RFP document.
Construction Works	shall mean all works and things required to be constructed by the Concessionaire, pursuant to the construction requirements and O&M Requirements.
Construction Requirements	shall mean collectively the requirement as to the construction of the Project Facilities.
Contractor	shall mean any person with whom Concessionaire has entered into/may enter into any material contract in relation with the construction works and O&M Requirements.
Corrupt Practices	Means any offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the. procurement process or in contract execution
Change in	means a transfer of the direct and/or indirect legal or beneficial

Ownership	ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected Bidder/Consortium Members} together with {its/their} Associates in the total Equity to decline below (i) 51% (fifty one per cent) after 10 years from the date of COD - Waste to Energy Plant, (ii) 33% (thirty three per cent) after 15 years from the date of COD - Waste to Energy Plant, and (iii) 26% (twenty six per cent) after 20 years from the date of COD - Waste to Energy Plant, or such lower proportion as may be permitted by the Authority during the remaining Agreement Period; provided that any material variation (as compared to the representations made by the SPV during the bidding process) in the proportion of the Equity holding of the {selected bidder/any Consortium Member} to the total Equity if it occurs prior to COD Integrated Waste Management Facility, shall constitute Change in Ownership;
CTP / SCTP's / Transfer Station.	A permanent facility for a Collection Transportation Point (Transfer Station) established or taken over by the Concessionaire at various locations of project area, where the waste is taken from smaller collection vehicles and placed in larger vehicles for transport, including truck trailers, railroad cars, or barges. Recycling/recovery of dry waste and some processing may also take place at transfer stations.
CV	Means Curriculum Vitae
Daily Weight Sheet	shall have the meaning given to the term in Clause 5.11.
DBFOT	Means Design, Build, Finance, Operate and Transfer
Debt Due	means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding and payable to the Senior Lenders under the Financing Documents: a. The principal amount of the debt provided by the Senior Lenders under the Financing Documents for financing the Project (the "principal") which is outstanding as on the Termination Date but excluding any part of the principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of Authority; and b. All accrued interest (calculated at a rate of 2% above the prevailing medium-term lending rate per annum for loans with 1 (one) year maturity as fixed from time to time by the State Bank of India), financing fees and charges payable on or in respect of the debt referred to in sub-clause (a) above upto the date preceding the Termination Date but excluding(i) any interest, fees or charges that had fallen due one year prior to the termination Date, and (ii) penal interest or charges, payable under the Financing Documents to any Senior Lender.
DPR	shall mean Detailed Project Report prepared by the Concessionaire and jointly signed between Authority & Concessionaire shall also include any subsequent revisions which are jointly signed.
Document	Means a piece of written, printed, or electronic matter that provides information or evidence or that serves as an official record for the – purpose of this tender.
Domestic Hazardous Waste	Domestic hazardous wastes mean waste contaminated with hazardous chemicals or infectious waste such as discarded paint drums, pesticide cans, CFL bulbs, tube lights, expired medicines, broken mercury

	thermometers, used batteries, used needles, gauge and syringes, etc. generated at the household level.
Dispute Resolution Procedure	means the procedure for the resolution of Disputes set forth in Article 27;
Drawings	shall mean all of the drawings, calculations, and documents pertaining to the Project, and shall include 'Working Drawings" as referred in the Clause 15.2
Doorstep Collection or Primary Collection	Doorstep collection entails the gathering of waste directly from the main gates of households, shops, offices, and other non- residential premises, where it has been segregated and placed for removal. Or from any collection point or any other location specified by the authority.
Dry waste	Dry Waste means any solid waste including, but not limited to plastics, rubber, lumber, trees, stumps, asphaltic products, or other materials that have reduced potential for environmental degradation.
Effective Date	means the date of signing of this Agreement and any amendment agreements as the context shall require with respect to new sites.
Eligible Assignment	Means a role assignment that requires a user to perform one or more actions to use the role.
Estimated Project Cost	Estimated Project cost is Rs /-Crores (Approximately) as per the authority.
Emergency	shall mean conditions or situation that is likely to endanger the safety of the individuals on or about the Project Facilities or which poses an immediate threat of material damage to any of the Project Facilities.
Encumbrances	means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including utilities both under and above the ground and encroachments on the site.
Extended Period	Extended Period will be the next 30 Years from the date of completion of initial Concession Period of 30 Years.
Equity	shall means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Actual Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component, but does not include Equity Support;
Escrow Account	means an account opened by the authority (Tripartite agreement between the Authority, Concessionaire and Banker. The authority always keeps a minimum amount equivalent to 3 months of Tipping fee.
Event of Default	shall have the meaning ascribed thereto in Article 24.1.
Excluded Waste	Shall mean waste material of the nature that the Project Facilities are not designed or authorized to receive, manage, process and dispose, which include. a. Industrial Hazardous Waste. b. Dead Remains (Animals).

	c. Construction & Demolition Waste (C&D Waste). d. Biomedical waste.
Existing MSW / legacy waste	shall mean the waste or legacy dumpsite lying in the proposed site planned for Integrated Waste Management Facility.
Financial Closure	shall mean the fulfilment of all Conditions Precedent and the availability of funds under the Financing Agreements.
Financial Year	shall mean the period commencing from April 1 of any given year to March 31 of the subsequent year.
Financing Documents or Financing Arrangements	means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures, bonds, and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Project.
Financial Proposal	Means a statement indicating the preliminary estimate of cost of construction, operations, fund available from Authority, if any for the project
Force Majeure	or Force Majeure Event" shall mean an act, event condition or occurrence as specified in Article 21.
Fraudulent Practice	Means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection process.
GoK	shall mean the Government of Karnataka
GoI	shall mean the Government of India
Good Industry Practice	means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence, which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Law, and Applicable Approvals, in a reliable, safe, economical, and efficient manner.
Hazardous Waste	shall have the meaning as defined under the Hazardous Wastes (Management and Handling) Rules, 1989 and as amended thereto.
Implementation Period for Processing & Disposal	[deleted]
Implementation Period for Waste to energy Plant	[deleted]
Implementation Period for Waste to energy Plant	[deleted]
Implementation Schedule	shall mean the Implementation Schedule to be prepared as a part of DPR with specific milestones for operationalization of activities/ Project Facilities on or before COD Integrated Waste Management Facility;
Implementation period	Shall mean the time period after obtaining the CTE/Environmental Clerance or any clearance required to the COD of Processing & Disposal Facility.

INR, Re, RS	Means "Indian Rupee(s)"
Industrial waste	Materials discarded from industrial operations or derived from manufacturing processes.
Independent Engineer	shall be a third party, which is either a company, corporation, partnership, joint venture, trust, unincorporated organization, authority body or any other legal entity as may be nominated who shall be the nodal person for supervision and monitoring of compliance by Concessionaire with respect to the Construction Requirements and O&M Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in the bid documents consisting of this Agreement and the RFP
Inerts	Wastes which are not bio-degradable, recyclable or combustible and includes non-recyclable fraction of construction and demolition waste, street sweeping or dust and silt removed from the surface drains.
Integrated Waste Management Facility	Integrated Waste Management Facility: Shall mean the facilities for weighing, post segregation, material recovery, processing of all kinds municipal solid waste received from the project Area having technology of storage, segregation, wet and dry waste processing facility, Material Recovery facility and disposal of RDF and Inerts disposal in a Scientific Engineered Landfill
Integrated Waste Management facility - Operations Period	Shall mean the period commencing from the COD of Integrated Waste Management Facility and ending with expiry of Concession Period, Extended Period or Termination Date, whichever is earlier.
Interim Phase	Shall mean the period commencing from the date of achieving of the Conditions Precedent as certified by the Independent Engineer and approved by the Authority, which phase continues till the COD of Integrated Waste Management Facility.
Joint Bidding Agreement	Means an agreement under which the parties agree to work together to submit a tender for a project
Joint Venture /Consortium/ LLP	Joint Venture means a business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task. Consortium means a group of companies or people with the same goal who are working together to achieve that goal. LLP means a business structure where each partner's liabilities are limited to the amount, they put into the business
Key Personnel	Means people who are essential to carrying out the work for the subject project as indicated in this RFP
LOA	Shall mean the letter of acceptance/award issued by the authority to the successful Applicant / Bidder.
Landfilling	means the disposal of the Residual Inert Matter and Rejected Wastes at the Landfill Site in accordance with the terms of this Agreement.
Lead Member	Means an entity designated to be the lead member by the members of a consortium or a joint venture (whether incorporated or not) for submitting the bid/proposal on behalf of such consortium or joint venture, as may be applicable.

Material Adverse Effect	means a material adverse effect on (a) the ability of either Party to exercise any of the rights to perform / discharge any of its duties / obligations under and in accordance with the provisions of this Agreement and / or (b) the legality, validity, binding nature or enforceability of this Agreement.
Material Breach	shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.
MSW or Municipal Solid Waste	means solid waste generated by households, public services, agricultural activities, commercial establishments and industries and shall include Solid Waste, and Organic Waste, but shall not include the Excluded Wastes.
MSW Rules	shall mean the Municipal Solid Waste (Management and Handling) Rules, 2016 framed by the Authority of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and includes any statutory Amendments / modifications thereto for re-enactments thereof, for the time being in force;
MRF	A facility where non-combustible solid is segregated, sorted for recovery of various components of waste by informal sector of waste pickers or any other work force engaged for the purpose before the waste is delivered or taken up for its processing or disposal.
MSW Supply / Project Area	Means the geographical / jurisdiction of Bengaluru Solid Waste Management Limited / Bruhat Bengaluru Mahanagara Palike or any extended area or any future delimited area of "BBMP"
O&M Requirements	shall mean the requirements as to operation and maintenance of the Project Facilities set forth in Schedule 4.
Organic Waste	means such type of Waste that can be degraded by microorganisms but shall not include Excluded Wastes.
Other Inert	shall mean the wastes which are not bio-degradable, recyclable or combustible and includes non-recyclable fraction of construction and demolition waste, street sweeping, or dust and silt removed from the surface drains.
Parties	shall mean the parties to this Agreement and "Party" shall mean either of them, as the context may admit or require.
Person	shall mean (unless otherwise specified or required by the context), company, joint venture (group of companies) (the Consortium).
Performance Security	shall mean the guarantee for performance of its obligations to be furnished by Concessionaire in accordance with Article 9 of DCA
Plastic waste	Any plastic product such as carry bags, pouches or multi layered packages which have been discarded after use or after their intended life is over.
Plant	shall mean the apparatus and machinery for carrying on the activities required for the Project, fixed or movable, but excluding consumables and premises.
Power Tariff	Rate of power in INR/Unit purchased by the power procurer / distribution company, generation board or any procurement agency from the Concessionaire.

Political Event	shall have the meaning set forth in Clause 21.3 of DCA.
Post Closure Activities	shall mean the activities to be undertaken by Concessionaire after closure of each landfill cell as certified by Independent Engineer
Preliminary Notice	means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.
Processing & Disposal Centre	Any establishment wherein the waste management processes namely post segregation, recovery, storage, collection, recycling, processing, treatment or safe disposal are carried out.
Project	shall mean the project for enabling collection, recycling, transportation, recovery of useful products or energy, processing and disposal of MSW and reclamation/alternative use of existing dump sites and for that purpose to design, develop, finance, construct, operate and maintain the Plant under and in accordance with the terms and provisions of this Agreement.
Project Area	shall comprise the Site and for the purpose of implementing the Integrated Waste Processing Facilities, the areas defined in Annexure 1 of the RFP during the period of this Agreement.
Project Completion Schedule	means the schedules mutually agreed by Concessionaire and Authority based on handover of Project facilities by the Authority
Project Facilities	means, as the context may require, either all or one or more of the following: (i) collection (ii) transportation, inclusive of transfer stations (iii) the Site (iv) the individual facilities comprising the Plant, namely the Compost Plant, RDF Plant, the Inert Management Facilities, (if Concessionaire decides to develop the same) and the Power Plant, and (v) the landfill and (vi) Reclamation works for alternative use of existing dump sites(vii) landfill gas to energy or compressed biogas (viii) anaerobic digestion- either wet to dry and any other optional facilities being developed by the Concessionaire under the terms & conditions of this Agreement.
Proposal / Bid	Proposal / Bid is the application, or a set of documents submitted by the prospective Applicant / Bidder in line with this RFP.
Professional Personnel	Means the team being proposed for the project which comprises of experts and specialists in the respective domain.
Prohibited Practices	Means any person engaged in the corrupt, fraudulent, coercive, undesirable or restrictive practices in the selection process.
Project	Means the scope of work mentioned in this RFP and to be executed in accordance with the terms and conditions stated in the concession agreement to be entered between the Authority and the Concessionaire.
Proposal Due Date	Means the date, time by which the bid/proposal in response to this this RFP has to be submitted/uploaded by the bidder in the concerned public procurement portal of Authority of Karnataka.
PPP	Means "Public – Private Partnership" involving collaboration between a authority agency and a private-sector company.
RDF	Refuse-derived fuel (RDF) refers to the high calorific non- recyclable combustible fraction of processed MSW, which is used either as a fuel for steam and electricity generation or as alternate fuel in industrial

	furnaces and boilers. The composition of RDF is a mixture that has higher concentrations of combustible materials than those present in the parent mixed MSW.
RDF Plant	means the Facility that will be constructed, operated and maintained as part of the Plant, for producing RDF from the MSW.
Recycling	The process of transforming segregated waste into a new product or a raw material for producing new products.
Reserve fund	A Reserve Fund is an amount equivalent to 3-month Tipping Fee always maintained in the Escrow Account by the Authority for meeting the regular Operation and Maintenance (O&M) payments to the Concessionaire.
Residual Inert Matter	means the waste matter obtained after processing of the MSW by each of the relevant Project Facilities.
Residual Solid Waste	means & includes the waste & rejects from the solid waste which are not suitable for recycling & further processing.
Request for Proposal or RFP	shall mean Request for Proposal document issued by the Authority for the Project for participating bidders.
Rupees or Rs	refers to the lawful currency of India.
Sanitary Landfill	The location where inert waste is deposited after processing the Waste shall be constructed and operated as per the relevant s of Solid Waste management Rules 2016.
Sanitary Landfill Facility (SLF)/ Landfill for Integrated Waste Management	shall mean the facility designed and developed with protective measures against pollution of ground water, surface water and air fugitive dust, wind-blown litter, bad odour, fire hazard, bird menace, pests or rodents, greenhouse gas emissions, slope instability and erosion for the disposal of Residual Inert Matter
Sanitary Waste	Wastes comprising of used diapers, sanitary towels or napkins, tampons, condoms, incontinence sheets and any other similar waste.
Secondary Collection	shall mean collection of MSW from any point other than Primary Collection.
Segregation of Waste	As per MSW Rules 2016, Point # 3.2 The waste should be segregated by waste generators into three fractions: wet (green container), dry (white container), and domestic hazardous waste (black container). The Authority will collect from door step and transport in a segregation manner and transfer into the segregated containers placed at CTPs at various locations or directly to any other facility as designated by the authority or as per the operational requirement.
Selection Process	means the tender process steps generally include the call for submissions, the bid submission, award of the work and execution of the contract
Senior Lender	means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the project cost and who hold charge on the assets, rights, title and interests of the Concessionaire.

Signing Date	Shall mean the date of signing of this concession agreement by the parties
Site	shall mean the land as per Article 10 for developing Integrated Solid Waste Management Facility at the location
SPCB	Shall mean State Pollution Control Board: specifically, Karnataka State Pollution Control Board.
SPV	shall mean the special purpose Vehicle company for signing the concession agreement and executing the contract and all purposes meaningfully mentioned in the relevant clauses for SPV in RFP/DCA.
Successful Bidder	Shall mean participating applicant / bidder selected by the Authority, through a competitive bidding process for implementing the Project and who shall incorporate the required "SPV" under the Companies Act 2013.
Successful Bidder/Applicant	Shall mean the entity or group of entities / consortium who has been selected by the authority to sign the Concession Agreement with the authority and to implement the project.
Supplementary Fuel	shall mean any fuel as a supplement to the MSW to enrich the RDF and/or to directly support the operation of power plant.
Specification and Standards	shall mean the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project Facilities, as set forth and any modifications thereof, or additions thereto, as included in the design and engineering for the Project Facilities submitted by the Concessionaire to, and expressly approved by, the Authority;
State	shall mean the Government of Karnataka State
State Government	State Government means Government of Karnataka.
Statutory Auditor	Means an auditor appointed under the applicable laws
Substitution Agreement	shall mean an agreement between two parties in which one party agrees to replace the other if they are unable to complete their obligations or meet the financial obligation of the project.
Taxes	shall mean and includes any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Authority Agency, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income.
Technical Proposal	Means document that outlines how you will deliver a specific project or service to a client or customer. It is often required for bidding on contracts, grants, or tenders, and it should demonstrate your expertise, approach, and value proposition.
Term of the agreement	means 30 years from the date of COD of Processing & Disposal Plant or Waste to energy Plant and further extendable for another 30 years. Post closure period of the land fill is for 15 years from the date of issue of completion certificate for each land fill cell. For the purpose of clarity, land fill construction is modular and each cell needs post closure maintenance upon capping. The last cell that will be capped at the end

	of the term shall also be maintained for the terms of 15 years by the Concessionaire.
Termination	Shall mean early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.
Termination Date	shall mean the date specified in the Termination Notice as the date on which Termination occurs / comes into effect.
Termination Notice	Shall mean the notice of termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.
Termination Payment	means the payments payable pursuant to Article 25.1 & 25.2 of this Agreement.
Tests	shall mean the tests to be carried out in accordance with the Construction Requirements or the O&M Requirements and generally conform to the nature of construction & operation as per standard practice.
Transfer station	A permanent facility at various locations of project area, where the waste is taken from smaller collection vehicles and placed in larger vehicles for transport, including truck trailers, railroad cars, or barges. Recycling and some processing activity may also take place at transfer stations
Tipping Fee	Shall mean the amounts payable by the Authority to Concessionaire for the services rendered under the scope of this project and this concession agreement.
Turnover	Means Gross earnings of a firm fined as the billings for contract work in progress and/or completed, normally expressed on an annual basis, and excluding the income from other sources
Vacant Possession	means delivery to Concessionaire of possession of the lands constituting the Project sites free from all Encumbrances and the grant of all easement rights and all other rights appurtenant thereto.
Waste generators	Shall mean all residential, commercial establishments, institutions, hospitals (solid waste), offices, small industries (non-hazardous) from where municipal solid waste is being generated within the Project Area.

Waste or SWM or Solid Waste Management	Solid Waste includes commercial, residential and other waste generated within the limits of Bruhat Bengaluru Mahanagara Palike, either in solid or semi-solid form excluding industrial hazardous waste. The term Solid Waste shall further mean the Municipal Solid Waste as described under the Solid Waste management (SWM) 2016 notified by MoEF & CC, Govt. Of India, notified on 08 April 2016, generated in the Project Area by all generators which includes domestic waste, sanitary waste, commercial waste, institutional waste, catering and market waste and other non-residential wastes, street sweepings waste, silt removed or collected from the surface drains, horticulture waste, agriculture and dairy waste in the project area inclusive of private markets, recreation centres, public places and from the places of occasional accumulation of such solid waste. visceral remains, hides, hoofs or such other animal parts which are found within the Project Area, but not including waste from abattoirs and tanneries.
Waste to Energy	The facility / process of extracting useful energy from waste, typically from the heat produced by incineration or any other process by way of processing the waste and generate energy either in the form of electricity or biogas/ bio CNG etc.
Wet Waste	Wet Waste refers to all waste items that are organic like food items, soiled food wrappers, hygiene products, yard waste, tissues and paper towels, as well as any other soiled items that would contaminate the recyclables
Weighbridge	means the electronic weighbridge capable of performing the operations specified in Article 2.
Writing	Means for the purpose of this document, any authentical handwritten, typed or printed, communication including, telex, cable, electronic mail, facsimile transmission with proof of receipt, when requested by the sender.

In witness whereof, the parties hereto have signed this Agreement on this day of 2024.

[Name of the Authority)

By: Name:

Title:

Title:

[Name of the Concessionaire]

By: Name:

Title: